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A SELECT COLLECTION Of REMARKABLE TRIALS:

In One VOLUME.

VIZ. Of

The Duke of *Norfolk*, and the Lady *Mary Mordaunt*, for a Divorce.

Patrick Hurley, for Perjury.

Dr. *Henry Sacheverell*, for a Misdemeanor.

James Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *Robert* Earl of *Carnwath*, and *William* Lord *Nairn*, for High Treason.

George Earl of *Wintoun*, for High Treason.

Robert Earl of *Oxford*, for High Treason, and other High Crimes and Misdemeanors.

Major *Stede*, *Bonnet*, and Thirty-three others, for Piracy.

Jeffery Gilbert, Lord Chief Baron of *Ireland*, *John Pocklington*, Esq; and Sir *John St. Leger*, Barons of the Exchequer, for a Contempt of the House of Lords.

Hugh Reason and *Robert Tranter*, for the Murder of *Edward Lutterel*, Esq;

Arundel Coke, alias *Cooke*, and *John Woodbourne*, for slitting Mr. *Crispe*'s Nose.

Christopher Layer, Esq; for High Treason.

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BRITISH MUSEUM
MAY 1

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STATE TRIALS.

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VIZ.

I. *The Journal of the Houſe of* Lords, *together with the* Bill.
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III. *The Examination and Evidence of the* Duke's *Witneſſes.*
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IT were to be wiſh'd, that the Editors of the two laſt Volumes of *Folio* Trials, had given us this and ſome others they have publiſh'd, a little more perfect than we find them. Here are none of the Proceedings on the two former Bills, which the Duke brought ſome Years before, in order to obtain a Divorce, which were rejected; Nor are there

Proceedings on the Bill of Divorce between the Duke and Dutcheſs of *Norfolk.*

there any of the Arguments or Speeches made in the Houſe of Lords by the Council, for and againſt the preſent Bill; or the Speeches of any of the Members there: We ſee nothing but the bare Evidence: The State of the Caſe by the Duke and Dutcheſs reſpectively; Biſhop *Couſens*'s Arguments for the Diſſolution of a Marriage in Caſe of Adultery; and the Arguments of the Council before a Committee of the Commons, for and againſt this Bill. I think it extremely proper therefore to give a ſhort State of the Caſe, before I enter upon the Proceedings in either Houſe in the Year 1699, when the Bill paſs'd: for this being the laſt Tranſaction that happen'd in point of Time, ſeems to ſtand a little prepoſterouſly in the Front of theſe Proceedings.

A State of the Caſe by the Dutcheſs.

The Dutcheſs, in ſtating her Caſe, obſerves, That upon her Marriage with the Duke of *Norfolk* in the Year 1677, her Father, the late Earl of *Peterborough*, paid as part of her Portion ten thouſand Pounds, and ſettled on that Marriage, Lands of near the Value of a thouſand Pounds *per Annum*, the Remainder of which, on Failure of Iſſue, was limited to the Duke and his Heirs. That the Earl alſo ſecur'd to the Duke the Reverſion of *Drayton*, after his own and his Lady's Death, which was worth ten thouſand Pound more; and receiv'd alſo by Agreement, a thouſand Pound *per Annum*, for twenty Years, out of the Earl's Eſtate; beſides very rich Jewels, Plate, &c. of great Value, which the Dutcheſs brought with her. And great Debts being contracted for the Support of the Duke's Honour and Service while he cohabited with the Dutcheſs, ſhe had, ſince his Separation from her, paid them out of her own Eſtate.

That the Duke, by the malicious Inſinuations of her Enemies, was prevail'd on to carry her, then a Proteſtant, into *France*, and put her into a Nunnery, where ſhe cou'd not be admitted without changing her Religion, and left her there on

on great Aſſurances of ſending for her home in a little time.

That by the Duke's Conſent, a conſiderable time afterwards, ſhe return'd to *England*, and liv'd at *Drayton* in *Northamptonſhire*; and at the Revolution retir'd again into *France*, where ſhe continu'd till ſhe heard of her Father's Impriſonment in the *Tower*, and then came back to *England*, and liv'd privately till her Father was diſcharg'd, and then ſhe came home to him. That in *January*, 1691, by the Inſtigation of her Enemies, the Duke was prevail'd on to exhibit a Bill againſt her in the Houſe of Peers, of the ſame Tenour with the preſent; and after Examination of Witneſſes, and a ſolemn Debate, that Bill was rejected in *February* following: Notwithſtanding which, the Duke exhibited another Bill in *December*, 1692, which after ſeveral Debates, was rejected likewiſe in *January* following.

That ſome time after, Propoſals were made to the Dutcheſs for accommodating all Differences between them, and Articles executed by the Duke and Dutcheſs on the twenty-eighth of *April* 1694; whereby, for the quieting all Differences and Diſputes, the Dutcheſs convey'd the Manour of *Caſtle-Riſing*, &c. to the Duke's Uſe; and ſhe, with her Truſtees, likewiſe aſſign'd their Intereſt in a conſiderable part of the Manour of *Sheffield* in *Yorkſhire* to the Uſe of the ſaid Duke, whereby the Duke had his then deſir'd Advantages: And the Dutcheſs aſſur'd his Grace, that ſhe wou'd avoid all Company for the future which ſhou'd give him any Offence, and wou'd not ſo much as pay a Viſit but where he liked; and that if ſhe died firſt, ſhe wou'd leave the Duke her Eſtate.

That notwithſtanding the ſaid Agreement, whereby the Duke and Dutcheſs agreed to live ſeparately, yet without ſignifying any Diſſatiſfaction, or without any manner of Notice, or previous Proceeding in the ordinary Courſe of Juſtice, he did on the ſixteenth of *February*,

1699, exhibit this Bill in the Houſe of Peers, for diſſolving his Marriage with the Dutcheſs, and enabling him to marry again.

The Caſe ſtated by the Duke.

The Duke, in Anſwer to this Repreſentation of her Grace's Caſe, ſaid, That neither he himſelf, nor his Father, had receiv'd from her Grace's Family any more than ten thouſand Pound; and abſolutely deny'd his having a thouſand Pound *per Annum* for twenty Years to his Uſe, as was pretended, or that he had the Value of five Pounds in Jewels, Plate, or other things, from her or her Family; but that ſoon after they married, he was oblig'd to borrow fifteen hundred Pound to buy Linnen and Houſhold Goods. That within the Space of three Years, which happen'd between the late Duke's Death and the parting of the Duke and Dutcheſs, ſhe ran him out by extravagant Expences near thirty thouſand Pound more than his Income; to pay which, he ſold his Life in two thouſand four hundred Pound *per Annum*, out of his Eſtate in *Suſſex* and *Yorkſhire*.

That ſhe had been ſo far from paying any Debts of his, that he had been ſued and forc'd to pay ſeveral conſiderable Sums to Tradeſmen, being Debts contracted by her without his Privity, though ſhe had a thouſand Pound *per Annum* Pin-Money all the while.

That upon her Refuſal to go into the Country, and her Father's refuſing to receive her into any Houſe of his, of her own Motion ſhe went to *France*; but the Duke did not concern himſelf whether ſhe came back or not, or ever heard of her Change of Religion, till he felt it as well as heard it, by her ſuing him in the High Commiſſion Court for Alimony, which forc'd him to retire beyond Sea, from whence he return'd about two Months before his preſent Majeſty King *William* landed.

Mr.

Mr. *Northey*, one of the Duke's Council, alſo gives us the following ſhort State of the Caſe.

A ſhort State of the Caſe by Mr. *Northey*, the Duke's Council.

He ſays, The Duke and Dutcheſs were married in the Year 1677; that they liv'd together till about the Year 1685, and then the Duke having ſome Account of her Galantries, they parted. That in *May*, 1689, ſhe lodg'd with Sir *John Germaine* at the *Cockpit* for two Months; after which, thinking it convenient to be a little more private, it was given out ſhe was gone to *France*, but in Truth, ſhe remov'd only to *Vaux-hall*, to a Houſe that was taken by Sir *John Germaine*'s Brother, and went by the Name of the Lady *Beckman*, living there two Years ſucceſſively; and Sir *John Germaine* came thither frequently once or twice a Week, and lay there a-Nights during that time. After ſhe had liv'd two Years at *Vaux-hall*, ſhe remov'd in the Year 1691 to her Houſe at *Mill-bank*, and there Sir *John* and ſhe were frequently ſeen in Bed together, which the Duke having Notice of, brought the two former Bills for a Divorce: but the Dutcheſs and Sir *John Germaine*, to avoid the Condemnation, kept the Witneſſes out of the way, and afterwards ſent them to *Holland*. And notwithſtanding the Dutcheſs's having been thus twice publickly charg'd with theſe infamous Courſes in the Houſe of Lords, ſhe frequently came to Sir *John Germaine*'s Houſe in the Years 1695 and 1696, *&c.* which occaſion'd the bringing of this Third Bill into the Houſe of Peers to obtain a Divorce, the Subſtance whereof follows.

The Bill brought in 1699.

It ſets forth, That *Henry* Duke of *Norfolk*, and Earl Marſhal of *England*, did, ſome Years ſince, marry the Lady *Mary Mordant*, and that ſhe had for divers Years liv'd in Separation from him, and had unlawful Familiarity and adulterous Converſation with Sir *John Germaine*, Bart. That ſhe was guilty of Adultery on her part, and had broken the Bond of Matrimony: And

foraſmuch as the Duke had no Iſſue, nor cou'd hope for any but ſpurious Iſſue, to ſucceed him in his Honours and Eſtate, unleſs the ſaid Marriage was declar'd void by Act of Parliament, and he was enabled to marry again, he prays that the ſaid Bond of Matrimony be, And it is thereby Enacted and declar'd to be diſſolv'd, vacated, and made void, to all Intents and Purpoſes whatſoever; and that it ſhall be lawful for the ſaid Duke to contract Matrimony with any other Woman or Women, as if the ſaid Lady *Mary* were naturally dead; and that all and every the Children born in ſuch Matrimony, ſhall be deem'd born in lawful Wedlock, and inherit the Honours and Eſtate of the ſaid Duke, according to the Courſe of Inheritances within this Realm. And it was Enacted, That the ſaid Lady *Mary* ſhou'd be barr'd and excluded all Dower and Thirds in the Honours, Lands and Hereditaments of the ſaid Duke; and that all Conveyances, Joyntures and Settlements, made by his Grace or his Anceſtors, for the Uſe and Benefit of the ſaid Lady *Mary*, or the Iſſue of her Body, ſhou'd be utterly void: And alſo that all Limitations and Creations, of any Uſe, Eſtate, Power or Truſt, made by the Anceſtors of the ſaid Lady *Mary*, to or for the Uſe or Benefit of the ſaid Duke, his Heirs or Aſſigns, out of any of the Lands or Hereditaments of any of the Anceſtors of the ſaid Lady *Mary*, ſhou'd be void. And it was further Enacted, That the ſaid Duke, his Heirs, Executors or Adminiſtrators, ſhou'd, before the twenty-fifth of *March*, 1701, pay unto the ſaid Lady *Mary*, or her Aſſigns, the Sum of ten thouſand Pound, which was her Marriage Portion; and in Default of Payment thereof, the ſaid Lady *Mary* ſhou'd be entitled to ſuch Jointure and other Advantages, as ſhe might have claim'd by Virtue of her Marriage Settlement, dated the thirteenth Day of *June*, 1677; and by Virtue of the Agreements contain'd in certain Articles dated the twenty-eighth of *April*, 1694; and alſo ſhou'd enjoy, during the

Page 559.

the joint Lives of the ſaid Duke and Dutcheſs, five hundred Pound *per Annum*, by Virtue of a Quadrupartite Indenture made the fifteenth of *June*, 1694: And in ſuch Caſe, the ſaid Duke, his Heirs, &c. ſhou'd be diſcharg'd from the Payment of the ſaid ten thouſand Pound; but on Payment of the ſaid ten thouſand Pound, the ſaid Lady *Mary* ſhou'd be wholly barr'd and excluded of her ſaid Jointure, and of all other Advantages out of the real and perſonal Eſtate of the ſaid Duke.

The Bill being read the firſt time in the Houſe of Lords on *Friday* the ſixteenth of *February*, 1699, it was order'd that the Dutcheſs of *Norfolk* might have a Copy of the ſaid Bill, and that the Duke ſhou'd be heard by his Council to make good the Allegations in it on *Tueſday* following, and that the Dutcheſs might have Council to attend at the ſame time if ſhe pleaſed.

The Bill read the firſt Time in the H. of Peers.

On *Saturday* the ſeventeenth of *February*, the Petition of the Dutcheſs of *Norfolk* being read, praying to be heard by her Council before any further Proceedings on the ſaid Bill, it was order'd that ſhe ſhou'd be hear'd by her Council on *Tueſday* next, and that *William Lane* and *John le Fountain* do attend the Houſe on the ſame Day, as Witneſſes on the Behalf of the Duke of *Norfolk*.

The Petition of the Dutcheſs to be heard by her Council againſt it.

On *Monday* the nineteenth of *February*, the following Witneſſes alſo were order'd to attend on the behalf of the Duke of *Norfolk*, *viz.* Mr. *Daniel Germaine*, Mr. *Simon Briane*, alias *de Brienne*, Mrs. *Anna-Maria Briane*, alias *Brienne*, and Mrs. *Judith Poſſette*, alias *Perſode*, the next Morning at eleven a-Clock.

Page 560. Order for the Witneſſes to attend.

On *Tueſday* the twentieth of *February*, after hearing Council for the Dutcheſs on her Petition, as alſo Council for the Duke, the following Order was made, *viz.*

That the Houſe will hear Witneſſes for the Duke, only to Matter of Fact ſince the rejecting the firſt Bill, except only Mr. Daniel Germaine, *Mr.* Simon Briane, *Mrs.* Anna Maria Briane, *Mrs.* Judith Poſſette, *and Mrs.* Eleanor Vaneſs, *who are at Liberty to give Evidence to Matters of Fact before that Time, which were not then before the Houſe, and they are requir'd to attend to Morrow Morning*; *as alſo* William Bayly *and* Edmund Davies *at the ſame Time, as Witneſſes for the Duke.*

On *Wedneſday* the twenty-firſt of *February*, the Houſe being inform'd that Endeavours had been made to ſerve Orders on the Duke of *Norfolk*'s Witneſſes, and ſeveral of them were ſick, and others were not to be found; and a Certificate under the Hands of *John Hutton* and *Theodore Colladon*, Doctors of Phyſick, was produc'd and read, as follows, *viz.*

We whoſe Names are under-written, Doctors of Phyſick, do certify, That Mary, *Wife of* Simon de Brienne, *and* Judith, *Wife of* Peter Perſode, *have been for ſome Time, and are at this preſent, ſo extraordinary ill in Bed, that neither of them can remove from thence without Danger of their Lives.*

Sign'd,

John Hutton.
Theodore Colladon.

After which an Order was made, That Doctor *John Hutton*, and Doctor *Theodore Colladon*, do attend the Houſe the next Day.

Then the Form of the Oath to be given the Witneſſes was ſettled, and was as follows.

You

You ſhall true Anſwer make to all ſuch Queſtions as ſhall be ask'd you by this Honourable Houſe, in Relation to the Charge of Adultery, in the Bill brought in by the Duke of Norfolk *againſt the Dutcheſs of* Norfolk *with Sir* John Germaine. *You ſhall declare your whole Knowledge of this Matter, and ſhall ſpeak the Truth, and nothing but the Truth, as well upon the Matter as you ſhall be examin'd on behalf of his Grace the Duke of* Norfolk, *as upon ſuch Interrogatories as ſhall be exhibited on behalf of the Dutcheſs of* Norfolk, *without Favour or Affection to either Party, ſo help you God, and by the Contents of this Book.* The Oath of the Witneſſes.

The Council being call'd in, the Duke's Council open'd the Nature of their Evidence, and Mrs. *Eleanor Vaneſſe* was ſworn; who appearing to be a *Dutch* Woman that did not well underſtand *Engliſh*, it was order'd therefore, that the Duke's Council ſhould have one Interpreter, and the Dutcheſs's another; and that the Duke's Agents ſhould forthwith deliver a Liſt of the Witneſſes they intended to examine, to the Dutcheſs of *Norfolk* or her Agents: and two other Witneſſes, *viz. William Allen* and *John Maiſland* were order'd to attend on behalf of the Duke with the reſt the next Day. Page 561. Interpreters order'd. And a Liſt of Witneſſes.

On *Thurſday* the 22d of *February*, Dr. *Colladon* and Dr. *Hutton* were call'd in, and depos'd, that Mrs. *Briane* and Mrs. *Perſode* could not ſtir Abroad without endangering their Lives: Then the two Interpreters took the following Oath, *viz.*

You ſhall well, truely, and faithfully interpret between the Houſe and Eleanor Vaneſſe *the Witneſs touching the Matters ſhe ſhall give in Evidence.*

And on the Motion of the Council for the Dutcheſs, the Duke's Agents were order'd to give the

the Chriſtian as well as the Surnames of their Witneſſes to the Agents of the Dutcheſs, and as much as they could of the Places of their Abode.

Then the Duke's Council proceeded and call'd *Eleanor Vaneſſe*, they ask'd her ſeveral Queſtions in *Engliſh*, which the Interpreter render'd into *Dutch*, and ſhe anſwering the Interpreter in the ſame Language again: He declared her Anſwers to the Houſe in *Engliſh*.

Nicholas Hauſeur alſo being ſworn, gave his Teſtimony in *French* by an Interpreter in like manner.

The Method of examining the Witneſſes that were Foreigners.

It was order'd, That the Short-hand Writers who took the Witneſſes Evidence, ſhou'd dictate to a Clerk, that what the Witneſſes ſaid might be tranſcrib'd, and that the Examinations with the Short-hand Writers Book and Papers ſhou'd be ſeal'd up and kept by the Clerk until the next Day, and then what had been tranſcrib'd ſhou'd be read at the Bar in preſence of the Witneſs.

On *Friday* the 23d of *February* the following Witneſſes were order'd to attend the next Day on behalf of the Duke, *viz. James Berger*, *Suſanna Barrington*, *Frances Knight* and *James Mackdonell*.

Witneſſes order'd into Cuſtody for not attending.

On *Saturday* the 24th of *February*, Oath being made that a Copy of the Order of the Houſe for Mr. *Simon Briane* to attend as a Witneſs for the Duke of *Norfolk* was left with his Servant at his Dwelling Place, and he not attending, it was order'd, that the Serjeant at Arms bring him to the Bar of the Houſe to anſwer his Offence.

The Witneſſes, ſign their Examinations.

The Council and Witneſſes being call'd in, and *Ellen Vaneſſe* at the Bar, the tranſcrib'd Depoſitions from the Short-hand Writer were read to her, and ſhe Sign'd them. In like manner *Nicholas Hauſeur*'s Depoſition was read, and he Sign'd it.

On *Monday* the 26th of *February*, the Examination of *William Bayly*, taken the *Saturday* before, was read to him, and he being croſs-examined

mined by the Dutcheſs's Council, that Examination was alſo read to him, and he ſign'd them.

The Dutcheſs's Council mov'd for Copies of the Depoſitions taken, and Time for the Dutcheſs to be heard: Whereupon an Order was made for both Parties to have Copies of the Depoſitions, and ſo much as related to that Matter in the Journal, and another for hearing the Dutcheſs by her Council on the *Monday* following.

Depoſitions of Eleanor Vaneſſe.

Queſtion, When did you firſt come acquainted with Sir *John Germaine* and the Dutcheſs of *Norfolk*? Page 562. *Eleanor Vaneſſe*, her Evidence.

Anſwer, Sir *John Germaine*'s Siſter Mrs. *Briane* hired me for a Cook-maid the Summer after the King came to *England*; I liv'd two Months with my Lady Dutcheſs at Sir *John Germaine*'s Houſe near the Cock-pit, and then I went with the Lady Dutcheſs to *Vaux-hall*.

Q. What Converſation had they with one another?

A. Like Man and Wife; I ſaw them often in Bed as Man and Wife.

Q. Did you think they had been Man and Wife? Page 563.

A. Not at firſt, but afterwards I did, and then they kept me within Doors for fear I ſhould tell it.

Q. How long did ſhe live at *Vaux-hall*?

A. About two Years, and Sir *John Germaine* din'd there ſometimes, and ſometimes lay there.

Q. What Converſation had Sir *John* with the Dutcheſs there?

A. They had but one Bed, they convers'd together as Man and Wife, and he lay there twice or thrice a Week, and ſometimes but once.

Q. What Name did the Dutcheſs go by at *Vaux-hall*?

A. By the Name of the Lady *Beckman*, and ſaid Sir *John* was her Brother.

Q. How

Q. How long did you ſerve the Lady Dutcheſs?

A. Until ſhe went to *Mill-Bank*, and nine or ten Weeks afterwards.

Q. Have you ſeen Sir *John* and the Dutcheſs in Bed together at *Mill-Bank*?

A. Yes; once or twice; I undreſs'd them my ſelf, and ſaw them in Bed, and carried them Chocolate, and Water to waſh their Hands in the Morning.

Q. How came you to leave their Service?

A. They ſent me away on account of the late Tryal, and Mrs. *Suſan*, Chambermaid to the Dutcheſs, and Mr. *Nicholas Hoſier*, Gentleman to Sir *John*, went with me.

Q. Whither was you order'd to go?

A. To *Holland*, to the *Hague*. They paid me in full, and promis'd me fifty Livres beſides, which I receiv'd in four Quarters from Sir *John*'s Brother *Philip* at the *Hague*; *Nicholas Hoſier* took care of our Paſſage; and they promis'd, if Matters did not go for the Dutcheſs, that ſhe would come to *Holland* her ſelf, and take me into her Service again.

Q. Did you ever ſee *Nicholas Hoſier* in Sir *John*'s Chamber.

A. Yes: He did the Buſineſs that I did when I could not be there; he was *Valet de Chambre*: He belong'd to the Dutcheſs at *Vaux-Hall*, and afterwards to Sir *John*.

Q. Who liv'd with the Dutcheſs at *Vaux-Hall*?

A. Sir *John*'s Siſter, Mrs. *Briane*, and Mrs. *Judith*, another of his Siſters.

Q. Did you ever ſee the Dutcheſs's Father when you was at *Mill-Bank*?

A. I have been ſeveral times at the Dutcheſs's Father's; and ſhe told her Father and Mother ſhe brought me from *Holland*.

Q. Who was the Lady Dutcheſs's Father?

Page 564. *A.* The Lord *Peterborough*; he liv'd at *Mill-Bank*.

Q. Did Sir *John Germaine*'s Brother in-Law, or Siſter, lye in the Houſe?

A.

A. Yes; Mr. *Briane* and his Wife us'd to lye there when they came firſt to *England.*

Q. Did you ſee any of Sir *John*'s Relations in the Room when the Dutcheſs was in Bed with him?

A. Yes; Mr. *Briane* and his Wife.

Eleanor Vaneſſe *croſs examin'd.*

Q. Did the Dutcheſs tell you that Sir *John Germaine* was her Brother?

A. She gave it out among the Neighbours, but never told me ſo.

Q. Was you Cook-maid?

A. I was hir'd for Cook-maid, and acted as ſuch, and us'd to clean Rooms: No body was ſuffer'd to come into the Room but Mrs. *Suſan* and me.

Q. When came you from *Holland*, and how?

A. I came from *Holland* five or ſix Weeks ago, and landed at *Graveſend.*

Q. Who ſent for you?

A. I don't know.

Q. Who paid your Paſſage when you came over, and took care of you?

A. Mr. *Nicholas* paid what I ſpent, and brought me from *Graveſend* to the Place where I lodge; I don't know the Place, having never been in *London.*

Q. Did not you live at *Vaux-Hall*, and at Sir *J. Germaine*'s in the *Cockpit*?

A. I was no farther than thoſe Houſes, I was never in the City of *London.*

Q. Was you not ſent for back from *Holland* to be a Witneſs?

A. No; I knew nothing of it till about eight or nine Weeks ago.

Q. How long is it ſince you went into *Holland*; and did you tell any one the Reaſon of your going?

A. It is about eight Years ago I went thither; I told the Reaſon to ſeveral in *Holland*, but to none here.

Q.

Q. Had you any Diſcourſe about this Matter eight Weeks ago?

A. I met Mr. *Nicholas* about a Year ago at *Amſterdam*, and ask'd him to get me a Place in *England*.

Q. What Diſcourſe had you with Mr. *Nicholas* about this Matter?

A. I ask'd Mr. *Nicholas* whether there was any Danger of any ſuch thing; and he ſaid, he knew nothing of it.

Q. Have not you and the Interpreter talk'd over this Matter before you came hither; or who have you talk'd to about it?

A. I have not talk'd with the Interpreter or any body elſe about it.

The Duke's Council examin'd her again.

Q. Was it your Buſineſs to look after the Chamber, and keep the Door conſtantly?

A. I us'd to waſh the Dutcheſs's Cloaths, and bring them to Sir *J. Germaine*'s Houſe, and keep the upper Rooms clean where he lay.

Q. Did *Suſan* go over with you, and come with you again?

Page 565. *A.* Mr. *Nicholas* brought me into a Room where ſhe was kept, and I ſtaid a while with her.

Q. Did *Suſan* go with you, and come with you again?

A. Nicholas and *Suſan*, and I were in a Room together, and Mr. *Germaine* came every Night when the Houſe was broke up, and told us what paſs'd.

Q. Did *Suſan* go to *Holland* with you?

A. Sir *John* order'd *Nicholas* and ſhe to go into *Holland*, and *Nicholas* went with her.

Depoſitions of Nicholas Hoſier.

Nicholas Hoſier examined.

Q. Do you know Sir *John Germaine* and the Dutcheſs of *Norfolk*?

A. I know them both; I came into Sir *John Germaine*'s Service firſt, when he liv'd in *Suffolk-Street*,

Street, being above half a Year before King *James* went away.

Q. Was you with him afterwards when he was at the *Cockpit*?

A. Yes; I liv'd with him at the *Cockpit* too.

Q. Was there any Lady that liv'd with Sir *John* there?

A. There was Mrs. *Brienne*, Sir *John*'s Siſter, and Mrs. *Judith Germaine*.

Q. Do you know any thing of the Dutcheſs of *Norfolk* at that time?

A. She was in the Houſe, and they eat and drank together, and lay together: I was his Valet, and us'd to undreſs and put him to bed.

Q. Where was the Dutcheſs at that time?

A. She was ſometimes a-bed, and ſometimes not; according as he came home, early or late.

Q. Did you leave Sir *John*'s Service after he came to live there?

A. I left his Service ſeveral times; the firſt time was in *Suffolk-Street*; and I came into his Service again the Summer after King *William* came to *England*.

Q. Was the Dutcheſs at the *Cockpit* before you came there?

A. She was there before, and continued there about fifteen Days after I came thither.

Q. Where did the Dutcheſs live after ſhe went from Sir *John*'s Houſe?

A. She dwelt at *Vaux-Hall*, where ſhe went by the Name of the Lady *Beckman*.

Q. Did you go with her, or remain in Sir *John*'s Service?

A. I went with my Lady Dutcheſs by Sir *John*'s Order, and was ſometimes with one, and ſometimes with the other; ſometimes one paid me, and ſometimes the other.

Q. Did Sir *John* come to *Vaux-Hall*, and who lay with him there?

A. He came there ſeveral times, and lay with the Dutcheſs; I undreſs'd him when they lay together.

Q.

Q. In what Service was you when you went out of *England*, and on what Occaſion did you go?

Page 566. A. I left Sir *John*'s Service when the Trial was depending between the Duke and Dutcheſs, becauſe I was afraid I ſhould be obliged to ſpeak what I had ſeen.

Q. Did any body elſe leave their Service at that Time?

A. Two Servants of the Dutcheſs's, (*viz.*) *Suſannah Barrington*, and *Eleanor Vaneſſe*; and I was ordered by Sir *John* to hire private Lodgings for them till the Wind ſerv'd for *Holland*, which was then contrary.

Q. What became of *Suſannah Barrington*?

A. She ſtaid about three Weeks with me, and then Sir *John* came and fetch'd her away; where he carried her I know not.

Q. What became of *Vaneſſe* and your ſelf afterwards?

A. When the Wind favour'd we paſs'd the Sea; we came to *Holland* about *Eaſter*.

Q. Have you not a Paper under Sir *John*'s Hand for your Diſcharge?

A. Yes, it is dated the 8th of *February* 1692, when I left the Service, and about ſix Weeks after we went on board; we lodg'd in the *Minories* in the mean Time.

Q. Who bore *Ellen*'s Charges?

A. Sir *John* gave me ſeven Guineas to defray our Expences, and pay our Paſſage.

Q. When did you return to *England*? and was you ſent for over?

A. I return'd the Summer following, Sir *John* ſent for me; I enter'd into his Service again when he liv'd at the *Cockpit*.

Q. After you came back did you obſerve any Converſation between Sir *John* and the Dutcheſs?

A. I ſaw them in Bed together ſeveral Times.

Q. When was the laſt Time you ſaw them in Bed together?

A. It was not at the *Cockpit*, it was at the Dutches's own Houſe, where ſhe lives now, about three

three Months before I went away the laſt Time, which was on the 27th of *April* 1696.

Q. When the Dutcheſs liv'd at *Vaux-hall*, can you name any one elſe that was Servant in the Houſe?

A. Yes, *Elen. Vaneſſe*, ſhe look'd to the Kitchen.

Q. Have you you ſeen her in the Chamber when the Dutcheſs was in Bed there?

A. Yes, very often.

Q. When the Dutcheſs was at *Vaux-hall*, did any Relations of Sir *John*'s come there?

A. Yes, Mrs. *Brienne*, and Mrs. *Judith*, his Siſters.

Q. Where did you meet with *Elen Vaneſſe* in *Holland*?

A. I met with her at *Amſterdam* about a Year and half ago. Page 567.

Q. Did you come over with her the laſt Time?

A. Yes, I came over with her about ſeven Weeks ſince, and put her into private Lodgings.

Q. Why did you put her into private Lodgings?

A. Becauſe I was afraid ſome body would do us an Injury. Sir *John Germaine* came up in a great Paſſion one Night, and ſwore this Rogue *Nicholas* would betray him.

Q. Was you or *Eleanor Vaneſſe* ſpoke to to come over?

A. I met with the Duke and my Lord *Howard* in *London* about a Year ago, and they ask'd me if I would do them a piece of Service, and bring this Girl *Vaneſſe* along with me, and I promis'd them; ſoon after I ſpoke to *Elen. Vaneſſe* about her coming over to ſpeak the Truth, and we agreed to come together.

Q. When you waited on Sir *John*, who waited on the Dutcheſs in her Chamber?

A. Suſan. Barrington, and *Elen. Vaneſſe*.

Q. Did you ſee any of Sir *John*'s Relations in the Chamber when he and the Dutcheſs were in Bed together?

A. Yes, Mrs. *Brienne*, and Mr. *Daniel Germaine* were there.

Nicholas Hoſier *croſs-examined.*

Page 568. *Q.* What Time did you go out of *England*?

A. We arriv'd in *Holland* about *Eaſter*, 1692.

Q. Was you in any Service when you told the Duke you would be true to him?

A. I was in no Service then, nor am in any yet.

Q. How long have you been out of Service? When did you leave Sir *John* the laſt Time?

A. It will be four Years next *June*; I have been in no Service ſince; I have ſomething in my own Country on which I can ſubſiſt my ſelf for a Time.

Q. You ſay you ſaw Sir *John* in Bed with the Dutcheſs in the Houſe where ſhe now lives; Do you know any of the Dutcheſs's Servants that were about her at that Time?

A. Yes; *Henry Keemer*, and *Suſannah Barrington.*

Q. Whoſe Servant was you then; and who let you in?

A. I was Sir *John Germaine*'s; I had a Key of the lower Room, and could come in when I pleaſed.

Q. What Time was this?

A. I can't recollect; but I came to bring a Clyſter for Sir *John*, and was deſired to ſtay a little while the Dutcheſs got up, who was in Bed with him.

Q. What Servant brought you up Stairs; for that Key only let you into the Lower-Room out of the Park?

A. Sometimes *Suſan. Barrington*, and ſometimes *Henry Keemer.*

Q. What Room did the Lady Dutcheſs lie in?

A. It is up Stairs, I can't tell how many Stories: As you come up on the Left-hand there is a way to go into it; when you have paſs'd the little Chamber-Door, you go into a Place full of *China*, and then you come to the Dutcheſs's Bed-Chamber.

Q. Which

Q. Which ſide of the Park does the Window in the Dutcheſs's Room look into?

A. Towards the Pond where the Braſs Statue ſtands?

Q. Does the Window look towards *Arlington Houſe*, or the Horſe-Guards?

A. It was not my Buſineſs to go to the Window; but when I was in the Room I could ſee the Water: I did not live in the Houſe, but went there ſometimes on Meſſages. Page 569.

Q. At *Vaux-hall* and the *Cockpit*, did you undreſs the Dutcheſs as well as Sir *John*?

A. No, not the Dutcheſs.

Q. When you came into *England* about a Year ago, was any Application made to you to make a Diſcovery, or did you offer to do it your ſelf?

A. The Perſon I addreſs'd my ſelf to to get me a Service, brought me to my Lord *Howard*; it was one *Richardſon* a Woman.

Q. Can you deſcribe the Room or Furniture where the Dutcheſs lay with Sir *John* in the Houſe where ſhe now lives.

A. I don't remember whether it was hung or wainſcoted.

Q. Was the Clyſter to be adminiſtred to Sir *John* while the Dutcheſs was in Bed with him?

A. No, I laid the Syrringe to the Fire while ſhe roſe; I compoſed the Clyſter my ſelf. This was about two Month's Time before I left them.

Q. Did you ſee the Dutcheſs in Bed with him there at any other Time but when you carried the Clyſter?

A. Yes, I have, but that was the laſt Time.

Q. Which of the Dutcheſs's Servants did you keep Company with?

A. With Mr. *Keemer*.

Depoſitions of William Bayly, *Saturday* 25 *Feb.*

Page 570.

Q. Do you know Sir *John Germaine* and the Dutcheſs of *Norfolk*? *W. Bayly's* Evidence.

A. Yes, I was Servant to Sir *John*; three Years I wore his Livery, and three Years I was his Stew-

ard; I came to live with him three Weeks before King *William* was Crown'd.

Q. Did Sir *John* and the Dutcheſs live together, or keep Company together?

A. I never knew them live together, but have ſeen them keep Company together, tho' I have never ſeen any Incivility between them.

Q. Where did you ſee them in Company together?

A. In my Maſter's Houſe five Years ago; he liv'd then where he lives now.

Q. Did the Dutcheſs ever lie there?

A. No, ſhe came two or three Times thither, and uſually in an Afternoon about four a-Clock, and might ſtay there two or three Hours.

Q. You are upon your Oath, did you never ſee them in Bed together?

A. By all that's good I never ſaw them in Bed together.

Q. Did ſhe come thither mask'd?

A. She us'd to come mask'd, but put it off when ſhe came into the Houſe; Mr. *Keemer* and Mr. *Carter*, two of her Servants, us'd to come with her.

Q. Who was in the Room with them at Sir *John*'s Houſe?

A. Mr. *Keemer* commonly ſtaid with them till they had din'd, and after Dinner the other Servants and I were in the next Room; and when they wanted any body, they call'd *Keemer*, or Mrs. *Suſan. Barrington.*

Q. Did your Maſter uſe to go to the Dutcheſs's Houſe?

A. I have heard ſo, but cannot ſay poſitively; I never went with him, but have gone as far as the *Horſe-Ferry.*

Q. When was the laſt Time you ſaw them together?

A. I have been out of my Maſter's Service theſe four Years, and it might be half a Year before.

Q. Do you know whither your Maſter went when you left him at the *Horſe-Ferry*?

A. I

A. I may judge he went to the Dutcheſs's, but I cannot ſwear he did.

Q. Did Sir *John* come home to Bed at Night?

A. Some Nights he did, and ſome he did not.

Q. Did you carry Cloaths to him at any Time?

A. I have carried Cloaths to Mr. *Keemer*, the Dutcheſs's Servant for him.

Q. Where did *Keemer* live then?

A. In a little Street going to the *Bowling-Alley*; he ſaid he liv'd with the Dutcheſs, but had a Houſe there; ſometimes I carried the Cloaths to Mr. *Keemer*, and ſometimes he came for them.

Q. When *Keemer* came to you for Cloaths; what Account did he give you where your Maſter was?

A. He gave me no Account; ſometimes my Maſter lay at Home, and ſometimes he did not: Many Times he has been at the Dutcheſs of *Mazarine*'s from four a Clock one Day, to twelve the next, and when he has loſt his Gold, he has ſent to me for more. Page 571

Q. Do you know *Nicholas Hoſier*?

A. I know him very well; I ſaw him here juſt now, I ſucceeded him when he went from my Maſter Sir *John Germaine* about the Time that the Trial was here before.

Q. How long was it e'er *Hoſier* return'd again to ſerve Sir *John*.

A. To the beſt of my Knowledge it was three Years, and then he ſucceeded me again.

Q. Did not you ſee *Hoſier* in *England* before you left your Maſter's Service?

A. My Maſter ſent for *Nicholas* into *Holland* about a Year before he did come over: My Maſter told me he would ſend for *Nicholas* again, and that I and he ſhould have the Charge of his Houſe. And when *Nicholas* came over, we had the Play at our own Houſe. *Nicholas* ſtaid there ſome Time, but he did not like his Buſineſs, and ſo he went away again, becauſe he could not have all the Money.

Q. Had you no Certificate or Diſcharge when you left your Maſter's Service?

A. No, my Maſter was ſo kind, that he brought me immediately into the Exciſe when I left his Service.

William Bayly *Croſs-examin'd*, Monday 26 *Feb.*

Q. Can you be poſitive when you ſaw the Dutcheſs at Sir *John Germaine*'s Houſe at the *Cockpit*?

A. I believe 'tis about five Years ago, but I can't be poſitive.

Q. Was it all in one Year that you ſaw her?

A. I believe it was all in one Summer.

Q. Did you know the Dutcheſs of *Norfolk* when you ſaw her there?

A. I did not know her before the Trial here.

Q. Did you know her at any Time after that Trial before you ſaw her at Sir *John*'s Houſe?

A. I was not ſure it was ſhe, only as I had it from *Keemer*: I don't know whether I ſhould know her now, 'tis ſo long ſince I ſaw her: The firſt Time they told me it was ſhe, I ſaw her in a Coach in the *Pall-Mall* with two other Gentlewomen, a little before the Trial was here; I follow'd the Coach, and the Dutcheſs went into ſome Lady's Houſe in *Dover-ſtreet*, and they ſaid the Dutcheſs was the firſt Woman that came out.

Page 572. Q. How long before this Examination did you ſee *Nicholas*?

A. I did not ſee him theſe three Years till now, and did admire to ſee him here; that a Man that had got his Bread under his Maſter, ſhould appear here againſt him, is ſo ungrateful a Thing.

Q. Why did you ſay he was ungrateful for coming hither?

A. I ſhould think my ſelf ungrateful to eat a Gentleman's Bread ſeven Years, and do him all the Spight and Malice I could.

Q. What Harm does *Hoſier* do Sir *John* in being a Witneſs againſt the Dutcheſs of *Norfolk*?

Do

Do you reckon it ungrateful to ſpeak the Truth againſt a Maſter?

A. No, I would not ſpeak an Untruth for all the Maſters in the World.

Q. Where is the Fault then more in *Hoſier* than in you?

A. I know not.

Q. Did *Elen. Vaneſſe* (this Woman that was examined as a Witneſs) live with Sir *John* when you did.

H. Yes, ſhe liv'd there.

Thomas Hawkſworth *ſworn as a Witneſs, Monday* 4 March.

Hawkſworth's Evidence.

Q. Do you know *Elen. Vaneſſe*, and did you live in the Dutcheſs of *Norfolk*'s Family?

A. I came to live with the Dutcheſs about *October* 1691. and liv'd with her two Years within two Months: *Elen. Vaneſſe* was Cook-maid there, and went away the beginning of *January*, or the latter end of *December* 1691. ſhe was turn'd away to the beſt of my Remembrance for keeping Company with *Dutch* Soldiers.

Q. Was ſhe in any other Office but the Kitchen, or had ſhe acceſs to the Dutcheſs's Chamber?

A. Never; ſhe was not allow'd to come higher than the firſt Floor.

Q. Who waited on the Dutcheſs in her Chamber?

A. Frances Knight, ſhe was conſtantly in the Dutcheſs's Chamber, and us'd to warm her Bed.

Q. You ſay *Vaneſſe* was not allow'd to come higher than the firſt Floor; explain that.

A. The Kitchen is under Ground backwards; That Room *Vaneſſe* clean'd was even with the Street, a Ground Room; the Laundry Maid *Suſan*, who is dead, clean'd the next Pair of Stairs.

Page 573.

Q. How long is it ſince you liv'd with the Dutcheſs?

A. Six or ſeven Years; I came to the Dutcheſs the *October* before the Bill was brought in.

Q. Do you remember when *Vaneſſe* was turn'd away?

A. It was about the latter end of *December*, or the beginning of *January*.

Q. Was it before or after the Bill?

A. Before I heard any Thing of the Bill ſhe was gone.

Hawkſworth *Croſs-examin'd.*

Q. What Station were you in when you liv'd with the Dutcheſs?

A. A Footman: She liv'd then upon the Row between the *Horſe-Ferry*, and *Mill-Bank*.

Q. Did Sir *John Germaine* never come to the Dutcheſs's Houſe while you liv'd there?

A. I never ſaw him there; I never ſaw any unhandſome Thing by the Dutcheſs all the Time I liv'd there, and I had the Privilege of the firſt and ſecond Floor, and ſometimes rubb'd the Lodging Room.

Q. Did you attend on the Dutcheſs's Chamber in the Morning?

A. Not conſtantly; we took it by Turns.

Q. Which of her Women attended in her Chamber?

A. *Suſan* -------, *Frances Knight*, and *Suſan Barrington*.

Q. How old was you when you liv'd there?

A. About Eighteen, and am about ſeven or eight and Twenty now.

John Peacock *ſworn as a Witneſs.*

J. Peacock's Evidence.

Q. Did you live with the Dutcheſs of *Norfolk* in 1691.

A. 'Tis ſix Years ſince I left her Service laſt *January*: I liv'd two Years and a half with her, or thereabouts. I came to her in the Month of *Auguſt*, and liv'd there both before and after the laſt Trial.

Q. Did you know one *Vaneſſe*, and what her Buſineſs was?

A. I

A. I knew one *Lena*: Her Buſineſs was below Stairs in the Kitchen: I never ſaw her in any other Room but the Outer Room next the Street: The Work ſhe was employ'd in was dirty Work; I never ſaw her clean, but naſty, and could not eat the Victuals of her dreſſing.

Q. Was you there before *Vaneſſe*?

A. I was in the Houſe ſometime before her Grace came over, to help the Upholder, and to carry Looking-Glaſſes and Stands: My Lady *Peterborough* order'd me to do what I did. Page 574

Q. What was your proper Buſineſs when you liv'd with the Dutcheſs at *Mill-Bank*?

A. When the Dutcheſs went Abroad I went with the Coach; and when ſhe ſupp'd or din'd at Home, I laid the Cloth, Forks and Spoons.

Q. Did you ever wait above Stairs?

A. Yes, I have waited above Stairs.

Q. Who waited on the Dutcheſs in her Chamber?

A. Frances Knight, one *Suſan*, and one *Suſannah*.

Q. Did you ever ſee this Woman *Helena* in the Dutcheſs's Bed-Chamber?

A. I never ſaw her there, nor above Stairs; I rubb'd the Bed-Chamber with a long Bruſh?

Q. Do you know when ſhe came to live with the Dutcheſs?

A. She came while I was there, and ſhe was turn'd away on Complaint of ſome Diſorders, and her Ill-dreſſing of Victuals.

Q. What Diſorders?

A. Men came to enquire for her in the Dusk of the Evening, and I told her Grace I did not think the Houſe ſafe, becauſe I had the Charge of Silver Spoons and Forks; one of the Men appear'd to be a Foot Soldier in a blue Coat.

Q. In what manner was ſhe put away?

A. The Dutcheſs turn'd her away upon theſe Complaints, before the Trial the latter End of *December*; and one *Goſling*, the Coachman's Wife, came in her room.

Q. Do

Q. Do you know *Hauſier*, or *Nichola*?

A. I never heard his Name before, or ſaw him about Houſe.

John Peacock, *Croſs-examin'd.*

Q. Where do you live now?

A. I have boarded in a Houſe at *Huntingdon* ever ſince I left the Dutcheſs's Service: I live on my own, and have no Employment, only I teach two or three Children out of Charity.

Q. When came you to the Dutcheſs's Service?

A. I ſerv'd her about ten or twelve Years ago, and I liv'd with her before about half a Year at *Drayton* in *Northamptonſhire*.

Q. How long did you leave the Dutcheſs after the Hearing came on in this Houſe?

A. It was about a Year and three Quarters, or two Years after.

Q. Can't you be poſitive at what Time you came to live with the Dutcheſs?

A. I came about *Auguſt* to *Mill-Bank*, but the Dutcheſs was not come then; but the *October* following ſhe came; I was at the Lady *Peterborough*'s, and help'd to carry the Things.

Q. Did you know where the Dutcheſs liv'd then?

A. Some ſaid ſhe liv'd in *Flanders*, others in *Holland*, and ſome in *France*.

Q. Was you never at *Vaux-hall* while the Dutcheſs liv'd there.

A. I was never there while ſhe liv'd there, if ſhe did live there; but when no body liv'd there I have ſeen the Houſe where they ſay ſhe did live.

Page 575. Q. Do you know Sir *John Germain*?

A. I never ſaw him but in his Coach; I never was at any Houſe where he liv'd.

Q. What Buſineſs did *Suſan Barrington* do?

Q. She help'd to dreſs and undreſs her Grace, and mend the Linnen I think: I ſaw her at the *George* Inn in *Huntingdon* about *Auguſt* laſt.

Q. Did

Q. Did *Vaneſſe* come with the Dutcheſs to *Mill-Bank*?

A. I think ſhe came with the Dutcheſs.

Q. Do you know where the Dutcheſs liv'd before ſhe came thither?

A. I have heard ſhe came from *Vaux-Hall*: When my Lady Dutcheſs went thither by Water the Summer after, I was told ſhe liv'd at ſuch a Houſe at *Vaux-Hall*.

Q. Were there any other Ladies went with the Dutcheſs by Water to *Vaux-Hall*, when you went with her?

A. Mrs. *Marſhall* and ſome others, and the Dutcheſs told them, that that was the Houſe ſhe liv'd at, at *Vaux-Hall*, when ſhe was walking in the Gardens.

Q. What do you mean by *Mill-Bank* Houſe?

A. Peterborough Houſe.

Frances Knight *ſworn as a Witneſs*, 4*th* March.

Frances Knight's Evidence.

Q. How long have you liv'd in the Dutcheſs of *Norfolk*'s Family.

A. Twenty ſeven Years and upwards, I lived with the Dutcheſs's Mother the Lady *Peterborough*.

Q. Did you know *Vaneſſe* in the Dutcheſs's Family at *Mill-bank*. Page 576.

A. Yes, I know her very well, ſhe was in the Kitchen.

Q. Did you uſe to be in the Dutcheſs's Bed-Chamber, and about her Perſon.

A. Yes; I was the firſt in the Morning there, and the laſt at Night conſtantly.

Q. Did *Vaneſſe* uſe to come into the Dutcheſs's Chamber?

A. Never: She was in the Kitchen; ſhe was not fit come into the Dutcheſs's Chamber, on account of her Cloaths.

Q. Upon what account did ſhe go away?

A. My Lady put her away becauſe Soldiers came and ask'd for her, and ſent for her to Ale-houſes

houſes at ten a-Clock at Night: My Lady would not keep a Servant that kept ill Hours.

Q. Was it before the Trial ſhe was put away? Conſider well what you ſay.

A. Yes; ſhe was: I ſpeak my Conſcience here before the Lords.

Q. Did you never know *Vaneſſe* come into the Dutcheſs's Chamber, or undreſs her?

A. Never, never: Oh! fie, never indeed.

Q. Did you never know *Nicholas Hauſeur*?

A. No: there were many ask'd for Mr. *Keemer*, but I did not know them.

Q. Did you know *Thomas Hawkſworth*, your Fellow-ſervant?

A. Yes; he came when my Lady came to *Mill-bank*, Mr. *Peacock* came before; they were both Servants.

Frances Knight *croſs examin'd.*

Q. How long is it ſince you liv'd with the Dutcheſs's Mother?

A. After the Dutcheſs married I came to live with her and my Lord Duke.

Q. After the Duke parted with the Dutcheſs, Where did ſhe go to live?

A. She liv'd at *Mill-bank*, and no where elſe that I know of.

Q. Did ſhe never live at *Vaux-Hall*?

A. I never liv'd with her at *Vaux-Hall.*

Q. Then you have not lived with her ever ſince ſhe married?

A. I have lived with her ever ſince: I have taken my Oath, and as near as I can tell you.

Q. Where did the Dutcheſs live before ſhe came to *Mill-Bank*?

A. She liv'd at *Vaux-Hall.*

Q. Did not you live with her there?

A. No: I broke my Leg and was brought to her Mother's, and ſtaid there a Twelve-month; Mr. *Peters* was my Surgeon, he can tell it. I came here to ſpeak Truth.

Q. Don't

Q. Don't be angry: When left you the Dutcheſs, after ſhe parted with my Lord Duke?

A. I left her at *Mill-bank.*

Q. Do you know the Queſtion: When did you leave the Dutcheſs after ſhe parted with the Duke?

A. I know no ſuch Queſtion as you ask. I ſpeak the Truth as well as I can.

Q. You went away lame you ſay, Where did you come to the Lady Dutcheſs again?

A. At *Mill Bank.*

Q. Was you ever with her at *Vaux-Hall*?

A. I was not there becauſe I was lame.

Q. Was you ever at *Vaux-hall*?

A. I told you I broke my Leg.

Q. Was you ever at *Vaux-Hall*, or not?

A. I tell you I was lame. I tell theſe Noble Lords every word I ſpeak is Truth.

Q. But you are ſworn to ſpeak the whole Truth.

A. I ſpeak the Truth: Why ſhould you do ſo?

Q. Was you ever with the Dutcheſs at *Vaux-Hall*?

A. I was not able to be there with her.

Q. Was you ever there with her, or not?

A. No; I never was at *Vaux-Hall* in my Life, but at *Mill-Bank* and *White-Hall*, I have.

Q. Where was the Dutcheſs when you broke your Leg?

A. I left her at *Mill-Bank* with her Mother, and found her at her Mother's when I came again. Page 577

Q. Can't you tell where ſhe was in the mean Time? Did none of the Family tell you where ſhe was?

A. No.

Q. When did you ſee *Suſanna Barrington*?

A. About three Weeks ago, ſhe receiv'd a Letter from *Flanders*, telling her, her Mother was dead; whereupon I deſir'd my Lady to give her leave to go to *Holland*, and ſhe is there.

Q. How long is it ſince ſhe went?

A. A Fortnight to Day.

Q. Did

Q. Did you ever ſee Sir *John Germaine* at the Dutcheſs's, or at *Mill-Bank*?

A. No; never.

Q. You have heard that the Dutcheſs liv'd at *Vaux-Hall*, at what time was it?

A. I can't tell, I was ſick a-Bed.

Q. Do you know what Houſe ſhe liv'd in?

A. Yes; It was one Sir *Thomas Groſvener*'s at *Mill-Bank*.

Q. I ask what Houſe ſhe liv'd in at *Vaux-Hall*?

A. You ask what I can't tell you.

Q. Whence came the Dutcheſs when ſhe came to *Mill-Bank*?

A. She came from the Place ſhe did; I did not ask her, I durſt not be ſo bold.

Q. Did you never know Sir *John Germaine* keep Company with the Dutcheſs?

A. No; only with the Duke at his Houſe in the Square, I ſpeak in the Preſence of God.

William White *ſworn as a Witneſs.*

Page 578. *W. White*'s Evidence.

Q. Did you live with the Dutcheſs of *Norfolk*?

A. I liv'd with her ſince the firſt Week of the firſt Trial, ſix, ſeven, or eight Years ago.

Q. What Care was taken about the Dutcheſs's Door in the Park?

A. I generally went out firſt in the Morning, the Door had two Bolts, a Croſs-bar, and an Iron Chain.

Q. Did you ever underſtand that *Hoſier* had a Key to that Door?

A. I never knew any thing of it, nor knew of what uſe it could have been; for he could not come in till the Door was unbolted.

Q. Did you never ſee him come in at that Door?

A. Yes; I happened to be going out my ſelf, and to open the Door for him: *Suſan Barrington*, my Lady Dutcheſs's Maid, had lent Money to a Man in *Holland*, and ſhe wrote a Letter by him

him to her Siſter, to get the Money; as ſhe told me.

Q. Had you ever any Diſcourſe with *Hoſier*?

A. I was one day coming from Change and met Mr. *L'Eſtrange* and this *Hoſier*, and we went together to a Tavern in *Smith-field*: He reflected on his Maſter Sir *John Germaine*, ſaid he had uſed him ill, and he deſerved to be ill uſed, and the Time would come when he ſhould repent it. This was about *Michaelmas* was two Years, or one Year, I can't tell which.

William White *croſs examin'd.*

Q. You liv'd with the Dutcheſs the firſt Week of the Trial, you ſay: Was *Vaneſſe* there then?

A. She was gone before I came.

Q. Whoſe Servant was *Hoſier* when you let him in?

A. I was told he was Sir *John Germaine*'s a little after; he had Buſineſs with *Suſannah Barrington* who ſent Letters to *Holland* by him, and by other Dutchmen, about the Money I mention'd.

Q. When did you ſee *Suſannah Barrington*?

A. About a fortnight ago, ſhe was in Tears, and ſaid her Mother was dead in *Holland.*

Q. Did you ever ſee Sir *John Germaine* in the Dutcheſs's Houſe.

A. I never ſaw him in any part of my Lady Dutcheſs's Houſe, nor in no Apartment, and I am the only Man that goes up and down Stairs.

Q. Did you lie conſtantly at the Dutcheſs's Houſe?

A. Moſt commonly ſince ſhe came to *Duke-Street.*

Q. At what time did you uſe to open the Park Door in the Morning?

A. At ſix, ſeven, or eight, there was no certain Hour.

Q. Did you ever know *Hoſier* come in at any Door but that?

A. Yes;

A. Yes; one rainy Day he came in at the Street Door, and ask'd for *Suſannah Barrington.*

Q. If he got in at the Park Door could he not get up Stairs?

A. He could not get into the Dutcheſs's Apartment, for there was a Room between where the Plate and Jewels lay, that no Key would open.

Q. If he got in at that Door, could *Suſannah Barrington*, when he was in, lead him round the Houſe without any difficulty?

A. I cannot ſay but ſhe might, but I never ſaw him but below Stairs with that Woman, and then he went away without going up Stairs.

Matthew Macdonnell *ſworn a Witneſs.*

Page 579. *M. Macdonnell's* Evidence.

Q. How long have you liv'd with the Dutcheſs of *Norfolk*?

A. Four Years at Lady-day next.

Q. In what manner was the Door kept, going into the Park?

A. It was bolted and lock'd: I bolted it very often at Night, and unbolted it in the Morning.

Q. Did you ever ſee *Hoſier* come in at that Door?

A. I opened it for him once or twice in the Evening, when he rung, and he ask'd for *Suſannah*, my Lady Dutcheſs's Servant.

Q. Did he go up Stairs?

A. No: I call'd her to him, I never ſaw him go up Stairs.

M. Macdonnell *croſs examin'd.*

Q. Did you know whoſe Servant *Nicholas* was?

A. I did not not know, nor I ask'd no Queſtions; I have ſeen him three times at the Dutcheſs's, he ask'd for *Suſannah Barrington*, and once for Mr. *Keemer.*

Q. Did you ſtay with him, or did you leave him?

A. No;

A. No; to tell you the Truth, I thought he came to court *Suſan*, and did not ſtay with him.

Q. When did you ſee *Suſan* laſt?

A. On *Tueſday* ſev'night in the morning: not ſince.

Q. What became of her after that?

A. She ſaid her Mother died lately in *Holland*, and ſhe was going there.

Q. Upon your Oath, don't you know ſhe is at the Dutcheſs's?

A. I know not of her being there, the Servants told me ſhe was gone.

Q. She was there when you came hither that *Tueſday* Morning.

A. On *Tueſday* Morning I did ſee her.

Q. Has the Dutcheſs taken any body to do *Suſan*'s Work?

A. I don't know of any.

Mr. Robert Welbourn *ſworn a Witneſs.*

He depoſed, that Mr. *L'eſtrange* told him, he heard *Nichalas Hoſier* ſpeak very hard ill Words againſt his Maſter Sir *John Germaine*. *L'eſtrange* being kept out of the way, as was ſuppoſed, by the Dutcheſs, was the occaſion of examining *Welbourn* as to what he ſaid. Page 580. *R. Welbourn's* Evidence.

Eleanor Montfort *ſworn.*

She depoſed, that her Husband, who had been executed for Coining, was very intimate with *Nicholas Hoſier*, That he told the Deponent juſt before he died, that *Hoſier* had a deſign to rob his Maſter; that he knew where his Gold and Jewels lay, and had made falſe Keys, and would watch his Opportunity, when his Maſter was at play, or out of Town. That *Hoſier* left the Keys at the Deponent's Houſe, and her Husband ordered her to deliver them to *Hoſier*, which ſhe did after he was dead, and *Hoſier* look'd mightily out of Countenance when he receiv'd them. *E. Montfort's* Evidence. Page 581.

The Dutcheſs's Council then prayed, that ſome Agreements made between the Duke and Dutcheſs in 1694, might be read out of the Deeds executed for that Purpoſe, and they were read accordingly.

Francis Negus *ſworn as a Witneſs.*

F. Negus's Evidence.

Q. Did not the Dutcheſs ſend a Meſſage to the Duke, by you, to this Purpoſe: That notwithſtanding the Articles, ſhe deſired to know from his Grace in what manner ſhe ſhould live, and that ſhe would be governed by his Directions?

A. Much about the Time of the Tranſaction of theſe Articles, my Lady Dutcheſs ſent for me, and I waited on her, and ſhe expreſſed herſelf very ſenſibly of the Misfortune of the Duke, and her ſelf, and deſired I would let my Lord Duke know it: That ſhe would avoid all Company that ſhould give him Offence, and would not ſo much as pay a Viſit but where he liked. I acquainted my Lord Duke with ſomething to this Purpoſe, for ſhe often ſaid, If ſhe happened to die before my Lord Duke, ſhe would leave him her Eſtate.

Q. Do you know of any Meſſage of Complaint ſent to the Dutcheſs ſince, that he would have her live in any other way?

A. I know nothing of that Matter.

Q. Do you know whether my Lord Duke ever deſired her to come and live with him.

A. I never heard any ſuch thing.

Q. Had you any Directions to attend the Duke, that he would give way in a Controverſy between the Dutcheſs and a Noble Lord, to know whether he would wave his Privilege?

A. When the Duke ſent for me, he enquired whether by the Agreement, he was oblig'd to let her have the Privilege. I ſaid, I underſtood it ſo; and tho' he had no mind to do it, yet as he had waved his Privilege in the Caſe of an Uncle, he would do it for her.

Sir *Thomas Powis*, I would only make uſe of it as an Inſtance of Kindneſs between the Duke and Dutcheſs.

The

The Council for the Dutcheſs having finiſh'd their Evidence, the Duke's Council deſired to call Witneſſes to ſupport *Nicholas Hauſier*'s Reputation.

William Allen *ſworn as a Witneſs.*

He depoſed, that being a Butcher; *Nicholas Hauſier* bought Proviſions of him when he liv'd with Sir *John Germaine*, and paid him very honeſtly for them. Page 582. *W. Allen*'s Evidence.

Richard May, *Houſe-Steward to the Duke of* Norfolk, *ſworn.*

He depoſed, that about a fortnight before his Grace had directed him to make Proviſion for *Nicholas Hauſier* and *Ellen Vaneſſe*, and that he took them into his Grace's Houſe in St. *James*'s Square thereupon, and had provided for them ever ſince.

Q. Had they the Liberty of the Houſe, or were they kept cloſe?

A. They were kept only as they deſired themſelves: No body was denied Liberty to ſee them, they deſired to be there rather than in any other Place.

Q. Do you know of any Reward they have had, or are to have?

A. I know of none.

Chriſtopher Raine *ſworn.*

He depoſed, that he was Servant to the Duke of *Norfolk*, and that *Nicholas Hauſier* and *Eleanor Vaneſſe* came to his Grace's Houſe about a fortnight ſince, that they had the Liberty of going where they pleaſed; but he did not know they had been abroad ſince they came thither. Page 583. *C. Raine*'s Evidence.

Edward Cotter *ſworn.*

He depoſed alſo, that they were brought to the Duke about a fortnight before. *E. Cotter.*

Francis Huddleſton *ſworn.*

F. Huddleſtone. He depoſed, he was Servant to the Duke, and that he ſaw *Hauſier* and *Vaneſſe* at Captain *Soames*'s Lodgings in *Gerrard-Street*, with the Lord *Howard*, about a fortnight before.

Proceedings in the Houſe of Commons.

There being no farther Account of the Proceedings in this Cauſe before the Houſe of Peers in the Folio Edition, I ſhall in the next Place obſerve, what was tranſacted in the Houſe of Commons in this great Cauſe. And firſt we meet with a Petition from the Dutcheſs, directed to the Knights, Citizens, and Burgeſſes in Parliament aſſembled, ſhewing, That for putting an end to all Differences between the Duke and her Grace, Articles of Agreement had been entered into, and executed in *April* 1694, by the Duke, her Grace, and her late Father, the Earl of *Peterborough*, whereby, and by Deeds executed, purſuant thereto; the Duke had his then deſired Advantage, and had fully enjoyed the Benefit thereof; and that her Grace about the time the ſaid Deeds were perfected, ſignified to the Duke by Mr. *Negus*, that ſhe ſhould always readily comply with all ſuch Orders, in her way of Living and Converſation, as he ſhould think fit to appoint. Notwithſtanding which, and without ſignifying any Diſſatisfaction with her, and without any manner of Notice or previous Proceeding in the Eccleſiaſtical Court, he did on the 16th of *February* laſt, exhibit a Bill in the Houſe of Peers, entitled, *An Act to diſſolve the Duke of* Norfolk's *Marriage with the Lady* Mary Mordaunt, *and to enable him to marry again.* Upon which the Proceedings were ſo very quick, two Witneſſes lately brought from beyond Sea, being forthwith examined againſt her Grace, who was charged with Facts ſuppoſed to be committed many Years ſince, and long before the date of the ſaid Articles, whereby ſhe was unprepared to make her Defence, as ſhe might have done if the Proceedings had been againſt her according to the known Laws

Page 585. The Dutcheſs's Petition.

Laws of the Land. The Places of abode of the Witneſſes produced being yet unknown to her; and her Grace having notice that the ſaid Bill had paſſed the Lords, and was ſent down to that Honourable Houſe for their Concurrence. She prayed ſhe might be heard by her Council at Law, and one Civilian againſt the ſaid Bill.

A Day being appointed by the Commons for the Committee to proceed in this Cauſe, the Duke publiſhed the following Papers in the mean time.

The Duke of *Norfolk*'s Reaſons for paſſing his Bill.

If want either of Precedent for a Parliamentary Divorce, before going through the tedious and ineffectual Methods of *Doctors-Commons*, or of Demonſtration of Fact, have hitherto deprived the Duke of *Norfolk* of that Relief againſt his Wife's Adultery, which the Divine Law allows; the late Statute made in the like Caſe, and the coming in of two, who while the Duke's former Bill was depending, had been ſent away to prevent that Diſcovery which they now make, cannot but be thought to remove all Objections againſt an Act of Parliament not only for the Benefit of the Duke, but of the Publick, as a Means to preſerve the Inheritance of ſo great an Office, and Honours to Perſons of the true Religion.

And ſince Biſhop *Cozens*'s Argument in the Lord *Roſſe*'s Caſe has made it evident, that thoſe Canons which govern the Spiritual Court in this Matter, are but the Remains of Popery, nothing can be now requiſite to ſatisfy the moſt ſcrupulous of the reform'd Religion, but to ſet the Duke's Proof of his Lady's Adultery in a true Light.

The Reputation which the Dutcheſs had maintain'd of Wit and Diſcretion, made it difficult for many to believe that ſhe could be ſurprized in the very Act of Adultery, as had been formerly prov'd. And tho' it then appeared, that one *Henry Keemer* liv'd with the Dutcheſs, while ſhe went by a feigned Name, at a Houſe hired for her at *Vaux-Hall*, by Sir *John Germaine*'s Brother; and that *Nicola*, who then liv'd with Sir *John*, us'd to receive *Wood*, ſent from the Page 586.

Dutcheſs to Sir *John*'s Houſe by the *Cock-Pit*, the withdrawing of *Nicola*, and carrying with him the *Dutch* Maid, equally entruſted with the Secret on Sir *John*'s Side, left no Evidence of their conſtant Converſation but *Keemer*, ſince dead, and *Suſannah Barrington*, who had the like Truſt from the Dutcheſs.

Keemer, tho' very unwillingly, ſome Years ſince confeſſed his Living with the Dutcheſs at *Vaux-Hall*, where he pretended ſhe was obliged to conceal herſelf for Debt, and what Share *Suſannah* had in the Secret, was unknown till *Nicola* appeared; *Nicola* coming into *England* ſome time ſince, in expectation of a Service, expreſſed his Readineſs to diſcover what he knew, and to endeavour to bring with him the *Dutch* Maid.

Eleanor Vaneſſe Exam. 22 *Feb.* 1699.

She proves, that for two Months, the firſt Summer after the King came for *England*, Sir *John Germaine* and the Dutcheſs liv'd together as Man and Wife, and were ſeen in Bed together by her, Mr. *Briane* and his Wife, Sir *John*'s Siſter, and that *Nicholas Hauſeur*, Sir *John*'s Valet de Chambre us'd to be aſſiſting to him, as the Dutcheſs's Woman, *Suſannah Barrington*, was to her, at going to bed and riſing.

She proves the like Converſation at *Vaux-Hall*, and the Dutcheſs's Houſe at *Mill-Bank*, till the Duke's firſt Bill of Divorce was depending; within which time *Nicholas Hauſeur*, by Sir *John*'s Order, carried away her and *Suſannah Barrington*, with Intention of going for *Holland*, to prevent their being examin'd to what they knew; but the Wind proving contrary, they could not go till the Bill was rejected, and then Sir *John* fetch'd back *Suſannah*, who was moſt uſeful to the Dutcheſs, but *Hauſeur* went for *Holland* with *Ellen*.

Nicholas Hauſeur.

He confirms *Ellen*'s Evidence in every particular, and beſides the Perſons mention'd by *Ellen*, as privy to Sir *John*'s lying with the Dutcheſs, names Sir *John*'s Brother *Daniel*. *Nicholas* having been found very truſty, his Maſter ſent for him to return to his Service, and gave him the Oppor-

tunity

tunity of proving the Continuance of the ſame Adulterous Converſation at ſeveral Times and Places, from the Summer 1692 to the 26th of *April* 1696. He ſwears he had after his Return to Sir *John*'s Service, ſeen them in Bed together at Sir *John*'s Houſe at the *Cock-pit*, and at the Dutcheſs's Houſes at *Mill-Bank*, and where ſhe now lives, and us'd to be let into the Dutcheſs's Apartment by *Suſannah Barrington* or *Keemer*. Nor can any Man who ſhall read the Teſtimonies given Mr. *Hauſeur* by Sir *John*; by the laſt of which it appears, that he ſerv'd him faithfully, as his Steward, reaſonably queſtion *Hauſeur*'s Credit.

Another who had been advanc'd by Sir *John*, from his Footman to Mr. *Hauſeur*'s Place, and from thence to a good Office in the Exciſe, very unwillingly confirm'd the Teſtimony of *Hauſeur*, and the *Dutch* Maid, not only as to the Time of their going from the Service of Sir *John* and the Dutcheſs, but tho' being no Foreigner, he could not ſo eaſily be ſent away to prevent Diſcovery, and therefore was not let ſo far into the Secret as *Hauſeur* and the *Dutch* Maid, yet he ſwears, the Dutcheſs us'd to come mask'd to his Maſter's Houſe, that he has gone with him as far as the *Horſe-Ferry* towards her Houſe at the *Mill Bank*, that then his Maſter ſometimes lay out all Night, and the next Morning he has carried Linnen and Clothes, for his Maſter, to *Keemer*'s Houſe, or *Keemer* has fetch'd them from him. And this he proves to have been ſince the rejecting the former Bill, and about five Years ſince, when he was ſucceeded by *Hauſeur*, as before he had ſucceeded *Hauſeur*. *Wm. Eyly.*

Two other Foreigners, *La Fountain*, who liv'd with Sir *John*, and was ſerved with Summons at the Dutcheſs's Houſe at *Drayton*, and *Hugonee*, who ran away from the Lord *Haverſham*'s ſince Summons was taken out againſt him, ſeemed to have had the ſame Truſt that *Hauſeur* had, for both declared, That nothing ſhould oblige them to betray their Maſter's Secrets: One ſaid, no

Court could diſpenſe with an Oath of Secreſy, and both declared, They would immediately go beyond Sea. Summons have been taken out for Mr. *Briane* and his Wife, and Sir *John Germaine*'s Brother (who are, or lately were in Town) to confeſs or deny what *Nicola* and *Ellen* appeal to them for; and it cannot be imagin'd, that Sir *John* ſhould chuſe the Honour of being thought to have to do with a Dutcheſs, before the clearing her and himſelf from the Imputation, by bringing his Relations to diſprove the Charge, if what is ſworn to be within their Knowledge is falſe.

And if Sir *John*'s Vanity ſhould prevail with him, at leaſt, it is to be preſum'd, that his Relations would be more juſt to him and the Lady, than to ſuffer any thing to paſs againſt them, which they could with Truth and Juſtice prevent.

But ſince none of them appear, the World will believe their abſenting more than a thouſand Witneſſes, in confirmation of what Mr. *Hauſeur*, *Ellen*, and *Bayley* have ſworn; whoſe Evidence not only ſtands untouch'd, by any thing offered by the Dutcheſs's Witneſſes, but is plainly confirmed by them in the principal Parts.

This being the Nature of the Proofs, 'tis obſervable.

1. That there never yet was any Caſe of this kind, where the Evidence was not liable to greater Objections than can be made to this.

Though in the lateſt Caſe of this kind, there was full Conviction of the Lady's having Children while ſhe lived ſeparate from her Husband, and the Preſumption was very violent whoſe the Children were; yet this was but Preſumption, and that was weakened by the Preſumption in Law, that they were the Husband's, eſpecially ſince there was no direct Proof of the Lover's ever lying with her.

2. Tho' in that Caſe by reaſon of the Interval of Parliament, and fear of the Deaths of Witneſſes, a Suit was begun in *Doctor's-Commons*; 'twas taken from thence while the Suit was depending

pending, therefore that was rather an Objection againſt proceeding in Parliament, than an Argument for it.

3. In that Caſe ſeveral Witneſſes were examined at the Bars of both Houſes, who had not been examined at *Doctors-Commons*, nor any Notice given of their Names before their Examination. Page 587.

4. It appears by that Caſe and the preſent, that the Examinations in Parliament are more ſolemn and certain, than thoſe of the Spiritual Court, which depend too much upon the Honeſty of the Regiſter, or his Deputy.

5. Before that Caſe, Parliaments have either broke through the Rules which bind the Spiritual Court, as in the Caſe of the Duke of *Norfolk*;* where the Parliament ratify'd the Marriage † as Lawful according to God's Law, tho' protracted and letted by reaſon of certain Decrees and Canons of the *Pope*'s Law; or elſe have diſſolv'd a Marriage where there had been no Application to *Doctors Commons*, as in the Caſe of Mrs. *Wharton* who had been married to Mr. *Campbell*, and yet there had been no Examination of Witneſſes, but what had been before the two Houſes ‖. So, long before, in the Caſe of Sir *Ralph Sadler*, upon Proof before the two Houſes that the Lady *Sadler*'s former Husband had deſerted her, and diſappear'd for four Years before ſhe married Sir *Ralph*, the Parliament legitimated her Children by Sir *Ralph*.

Whereas ſome object againſt the paſſing the Bill, as if it would countenance a Juriſdiction in the Houſe of Lords to examine to ſuch matters in the Firſt Inſtance, or Originally, the Objection wou'd be the ſame if it had began, as it might, in the Houſe of Commons; but in Truth would be of equal Force againſt moſt Private and ſeveral Publick Acts occaſion'd by the Examination of Witneſſes or Notoriety of Fact.

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* 1 Eliz. c. 31. † 2 & 3 W. & M. ‖ 37 Hen 8.

Since

Since therefore the Duke has ſo long and ſo often in vain endeavour'd to be freed from a Lady publickly fam'd and prov'd to have liv'd with Sir *John Germaine* as his Wife; the Duke's former Diſappointments cannot but be Powerful Arguments for his ſpeedy obtaining that Juſtice which the *Spiritual-Court* cannot give him, their Power reaching no farther than to that Liberty of living as ſhe liſt, ſome Years ſince ſettled by Articles. But as none of leſs Art and Oratory than her Council could have turn'd this into a Licence to commit Adultery, if ſhe liſt, or a Pardon Afterwards; had there not been Evidence of her acting according to ſuch Conſtruction, the Duke would have hop'd ſhe had repented of the former Injuries he had receiv'd from her; but now hopes ſhe ſhall no longer continue to bear the Name of his Wife, and put him in danger of being ſucceeded by Sir *John Germaine*'s Iſſue, or deprive him of the Expectation of leaving his Honours, Offices, and Eſtate to a Proteſtant Heir.

Biſhop Cozens's *Argument, proving that Adultery Works a Diſſolution of the Marriage: Being the Subſtance of ſeveral of Biſhop* Cozens's *Speeches in the Houſe of Lords upon the Debate of the Lord* Roſe's *Caſe, taken from the Original Papers writ in the Biſhop's own Hand.*

Biſhop *Cozens* Argument for the Diſſolution of a Marriage in caſe of Adultery.

The Queſtion is indefinitely to be ſpoken of, Whether a Man being divorced from his Wife who hath committed Adultery and is convicted of it, may marry himſelf to another Wife or no, during the Life of her which is divorc'd?

The Place in St. *Matthew* the 5th repeated again St. *Matthew* the 19th, has great Perſpecuity, if it be not lawful for a Man to put away his Wife and marry again, except it be in the Caſe of Fornication (for the diſplacing the Words by putting the Exception before the Marriage cannot alter the Senſe) then *e contrario* it muſt of Neceſſity follow, that if the Wife be put away for

For-

Fornication, the Husband by the Tenour of Chriſt's Words is left free to marry again; which Freedom is not allow'd to the Adultereſs herſelf, nor any Man elſe that ſhall marry her.

St. *Mark*, and St. *Luke* have been oppos'd to St. *Matthew*; and it has been ſaid, that Chriſt's Words in St. *Matthew* did not properly belong to Chriſt's Diſciples, or the Chriſtian Church, as the Words in St. *Mark* and St. *Luke*, which are abſolute, do; which is a Saying that neither I, nor I think no body elſe, ever heard before, for Chriſt's Sermon on the Mount was ſpoken to his Diſciples, and eſpecially belong'd to Chriſtians.

'Tis clear they are ſpoken to his Diſciples: for he ſays to them, that they are the Salt of the Earth, and the Light of the World, and that they are bleſſed when they ſuffer Perſecution for his Name's Sake; which no Man will ſay or apply to the *Jews*.

'Tis true, that in the 19th Chapter of St. *Matthew* Chriſt anſwers the *Scribes* and *Phariſees* who came to tempt him with their Queſtion, Whether it was Lawful for a Man to put away his Wife for any Cauſe, as they ſaid *Moſes* had permitted them to do. But the Anſwer that Chriſt gave them, That it was not lawful but only in the Caſe of Adultery, for Men to put away their Wives and marry another, was a Rule which concern'd all Chriſtians to obſerve for ever after, and for that Reaſon was recorded by St. *Matthew*.

The Words in St. *Mark* and in St. *Luke* are not to be taken abſolutely, but to be ſupply'd and underſtood by his Words in St. *Matthew*, as in many other Caſes is clear, *viz. The Thief upon the Croſs*, *Baptiſm in the Name of the Father, Son and Holy Ghoſt*, &c. whereof many Inſtances may be brought, as the Deſtruction of *Nineveh*, &c.

But for Chriſt's Words the Exception confirms the Rule, and infers a Conceſſion, that in the Caſe of Fornication the putting away one Wife and marrying another is allow'd. It is alike with divers other his Exceptions which are found in Scripture: for Brevity I ſhall inſtance in this one, *viz.* Page 588.

viz. Except ye Repent, ye ſhall all likewiſe Periſh. Upon which Text, if I, or any Biſhop elſe were to preach, I believe we ſhould not diſcharge our Duty unleſs we ſhould tell the People, That if by the Grace of God they did Repent, they ſhould not Periſh.

The Exception here εἰ μή, *niſi, unleſs*, is parallel with 1 *Kings* iii. 11. *None were in the Houſe, except we Twain*, they two therefore were, others were not.

Such Exceptions proceeding from Natural Equity, are tacitly employ'd in Laws, tho' pronounced in general Terms.

But as to the Exception here, the Words are not capable of any other Senſe than as I have obſerv'd; for except that Reſtraint be referr'd to marrying again, the Senſe would run thus, *Whoever puts away his Wife, commits Adultery*; which ſtands not with Truth or Reaſon, ſince it is not the Diſmiſſion that is adulterous, but the Marriage of another; it is therefore the plain Drift of our Saviour to teach the *Phariſees*, that the Marriage of a ſecond Wife after a Diſmiſſion of a former for any other Caſe except Fornication, is no leſs than Adultery, thereby inferring, that upon a juſt Diſmiſſion for Fornication, a ſecond Marriage cannot be branded with Adultery.

Beſides, the *Phariſee*'s Queſtion, (*Is it lawful for a Man to put away his Wife for every Cauſe*?) was not without a plain Implication of Liberty to marry another, which our Saviour well knowing, gives a full Anſwer, as well to what he meant as what he ſaid, which had not been perfectly ſatisfactory if he had only determin'd that one Part concerning Diſmiſſion, and not the other concerning Marriages; which Clauſe if two Evangeliſts expreſs not, yet it muſt be fetch'd neceſſarily from the Third, ſince it is a ſure and irrefragable Rule, that all four Evangeliſts make up one perfect Goſpel.

The *Romiſts* and College of *Doway* urge for the *Popiſh* Doctrine, *Rom.* vii. 2. *The Woman which hath an Husband is bound by the Law to her Husband as long as he liveth*. But

But

1. This Place is to be expounded by Chriſt's Words.

2. St. *Paul* hath no Occaſion here to ſpeak of Divorce, but Marriage whole and ſound as it ſtands by God's Ordinance.

3. He ſpeaks of a Woman who is under a Huſband-----, ſo is not ſhe that is divorced from him.

4. St. *Paul* uſeth this to his Purpoſe of the Law being dead, to which we are not bound: Nor is their Doctrine more favoured by 1 *Cor.* vii. 10. *Let not the Woman depart*, as being her Choice whether ſhe would depart or not; but in the Caſe of Fornication ſhe was to depart, or rather be put away whether ſhe wou'd or not.

The Bond of Marriage is to be enquir'd into what it properly is. Being a Conjugal Promiſe ſolemnly made between a Man and his Wife that each of them will live together according to God's Holy Ordinance, notwithſtanding Poverty or infirmity, or ſuch other Things as may happen during their Lives. Separation from Bed and Board, which is part of their Promiſe ſo to live together, doth plainly break that part of the Bond whereby they are tied to live together both as to Bed and Board. The Diſtinction between Bed and Board and the Bond, is new, never mentioned in the Scripture and unknown to the antient Church, deviſ'd only by the Canoniſts and School-men in the *Latin* Church (for the *Greek* Church knows it not) to ſerve the *Pope*'s Turn the better till he got it eſtabliſh'd in the Council of *Trent*, at which time, and never before, he laid his *Anathema* upon all them that were of another Mind; forbiding all Men to marry, and not to make any Uſe of Chriſt's Conceſſion.

Bed and Board, or Cohabitation, belong to the Eſſence and Subſtance of Matrimony, which made *Eraſmus* and Biſhop *Hall* ſay, That the Diſtinction of thoſe two from the Bond, is meerly chimerical and Fancy.

The

The Promiſe of Conſtancy and mutual Forbearance, if it hinder Divorce as the Bond, hinders it alſo as to Bed and Board, and becauſe the ſame Bed and the ſame Table were promiſed in the Marriage Contract; but the Promiſe does not extend even to tolerating Adultery or malicious Deſertion, which according to God's Ordinance diſſolves the Marriage.

Our Saviour ſpeaks of Divorces inſtituted by the *Moſaical* Law, but they were no other than Divorces from the Bond.

The Form of the Bill of Divorce among the *Jews* was this, *Be expelled from me, and free for any Body elſe.* To give the Bill of Divorce is from the Root כרת, which is to break or cut off the Marriage. With this agree the antient Canons, Councils, and Fathers of the Church.

Concil. Neocæſar. & *Elib.* forbid the retaining an adulterous Wife. *Concil. Eliber. Aurelian* & *Arelatenſ.* give Liberty in ſuch Caſe to marry again, *Clemens*'s Conſtitution, *Tertullian. St. Baſil* in his Canons, approv'd by a General Council, are for marrying again. *Concil. Venet.* If they marry in any other Caſe than Fornication, they are to be excommunicated, and not otherwiſe. *Concil. Wormat.* gives Liberty to the innocent Party to marry after Divorce. *Concil. Lateran.* gives Leave for the innocent Party after a Year to marry again.

Concil. Lateran. If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the firſt, he may remain with the ſecond.

Lactantius, St. Hierom, and Epiphanius are for Allowance of Marriage after Divorce.

Chryſoſtom Hom. 19. 1 *Cor.* 7. *ſays, That the Marriage is diſſolv'd by Adultery, and that the Husband after he hath put her away is no longer her Husband.*

Theophylact on the 16th of *St. Luke* ſays, that St. *Luke* muſt be interpreted by St. *Matthew.* St. *Hillary* is for marrying again as Dr. *Fulk* ſaith upon St. *Matthew* the 17th. The *Eaſtern* Biſhops in the Council of *Florence* are for marrying again.

again. *Juſtin Martyr* ſpeaks of a *Roman*'s giving a Bill of Divorce to a diſſolute Husband, without finding any Fault with it.

St. *Ambroſe* ſays a Man may marry again if he puts away an adulterous Wife. *Theodoret* ſaid of a Wife who violated the Laws of Marriage, *Therefore our Lord requires the Bond or Tye of Marriage to be diſſolv'd.*

All the *Greek* Church to this Day allow it. *Eraſmus*, *Cajetan*, and other *Papiſts*: The Civil Law and the Laws of the *Emperor* are clear for it; and the Conſtitutions of our own Church of *England* in the time of *Hen.* 8. *E.* 6. and Queen *Elizabeth*. Page 589.

The Practice in the *Engliſh* Church in the Stat. 1 *Jac. c.* 11. againſt ſecond Marriages, Divorces are excepted; and in Canon 107. 'tis provided they ſhall not marry again, but 'tis not ſaid ſuch Marriages are void, only the Caution is forfeited: *Neither doth the Canon ſpeak of ſuch Separations wherein the Bond itſelf is broken, as 'tis by Fornication.*

Even the Canon Law allows marrying again in caſe a Woman ſeeks her Husband's Life, and in caſe of a Bond Woman. *Gracian* ſays in the Caſe of Adultery, lawful Marriages ought not to be deny'd. In the Caſe of an incurable Leproſy it was the Advice of St. *Gregory* to *Auſtin* the Monk, that he that could not contain ſhould rather marry. *Bellarmine* owns, That the Bond of Marriage of *Infidels* is diſſolvable, but the Marriage of the Faithful and of *Infidels* are of the ſame Nature. *Juſtinian*, a *Jeſuite*, confeſſes, that it is ſimply Lawful for the innocent Party to marry again. And the *Roman* Doctors allow a Diſſolution of the Bond of Marriage if the Parties ſhould after Conſummation transfer themſelves into a Friery or Nunnery.

The Cannons which in the Caſe of Adultery prohibit marrying in the Life-time of the guilty Perſon, are contrary to two Acts of Parliaments,

* Ref. Leg. Eccleſ. Tit. de Adulterijs & Divortijs.

made

made 25 *H.* 6. and 3 and 4 *Ed.* 6. wherein no Canons are allow'd that be any ways *repugnant to the Laws of God or the Scripture, the King's Prerogative Royal, and the Statutes of this Land.* Thirty two Perſons are to review the Canon Law, in which Review drawn up by Archbiſhop *Cranmer*, the innocent Perſon is permitted to marry again *according to Chriſt's Law and Conceſſion.*

We have Examples of ſuch Marriages in *H.* 4. of *France*, and *H.* 8. of *England*, Lord *Mountjoy*, Lord *Rich*, Biſhop *Thornborough*, and divers others. And 'tis obſervable, That in the Caſe of the Marquis of *Northampton*, 4 *Ed.* 6. who had been divorc'd for his Lady's Adultery, and married another before an Act of Parliament made concerning it, an Act which paſſed afterwards (only two Spiritual and two Temporal Lords diſſenting) declares he had been at *Liberty by the Laws of God to marry, and did lawfully marry another*: Where the Act manifeſtly ſuppoſes that whatever has obtain'd for Law till that time, was void as being contrary to God's Law.

The moſt conſiderable Men of the Reform'd Churches, both at Home and Abroad, are of this Opinion.

Grotius quotes *Tertullian*, in whoſe Time it was lawful for the innocent Party to marry.

Lancelot Inſtit. Jur. Can. acknowledges that Divorce is a Diſſolution of the Marriage.

Selden, who is not likely to contradict the Laws of this Kingdom, manifeſteth, That Marriage after a Divorce is to be allow'd, and in that Opinion Dr. *Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Ameſius* deſerves to be ſet down at large: "Marriage, ſays he, cannot be diſ-
"ſolv'd by Men at their Pleaſure, and for that
"Reaſon as 'tis conſider'd ſimply and abſolutely,
"'tis rightly ſaid to be indiſſolvable; becauſe
"Marriage is not only a Civil but a Divine Con-
"junction, and is alſo of that Nature that it can-
"not be diſſolv'd without Detriment to either
"Party; yet it is not ſo indiſſolvable but that it
"may

" may be diſſolv'd for a Cauſe which God ap-
" proves as juſt, for the Indiſſolvability was not
" inſtituted for a Puniſhment, but for the Com-
" fort of innocent Perſons, and it admits an Ex-
" ception wherein God ceaſes to conjoin. By A
" dultery two are made not to remain one Fleſh.
" Hence it is that a contagious Diſeaſe is not
" a Cauſe of diſſolving Marriage. *By Adultery*
" *the very Eſſence of the Contract is directly*
" *violated*; *but the Contract ceaſing, the Bond*
" *depending on the Contract, neceſſarily ceaſes.*
" It is againſt all Reaſon that all Matrimonial
" Duties ſhould be for ever taken away, yet
" the Bond or Obligation to thoſe Duties
" ſhould continue. The Words of our Lord,
" *Mat.* 5. 32. and 19. 9. have no Diſtinction or
" Limitation of the putting away, but ſimply and
" abſolutely approve of putting away; therefore
" they approve of putting away not partial, or to
" a particular Purpoſe from Bed and Board, but
" Total."

None are againſt the Reform'd Divines but Dr. *Howſon*, Mr. *Bunny*, and Dr. *Prideaux*.

Dr. *Howſon* was a profeſs'd Adverſary to Dr. *Reynolds*, who was a great Maintainer of the Church of *England* againſt all the Points of Popery and particularly in this.

Dr. *Taylor*, Biſhop *Hall*, Dr. *Fulk*, are for ſecond Marriages; no Authors againſt them but the Council of *Trent*, and thoſe of the Church of *Rome*; whoſe Credit is only ſav'd by thoſe of our Church who agree with them.

Upon the Difference of Explication between St. *Ambroſe*, *Origen* and St. *Auſtin*, a new kind of Divorce has been thought of *from Bed and Board*; but this Divorce, or *Name of a Divorce*, was unknown to the *Jews* and antient *Chriſtians*.

I ſaid ſo much before at the firſt and ſecond Reading of this Bill, that I was in good Hopes to have had no farther Occaſion given me of anſwering any Objections againſt it now; but ſeeing divers new Arguments have been ſtudied and fram'd

5. If they be kept altogether by Divorce from Marrying, it would occaſion the innocent Party to Sin.

The Objections of the Dutcheſs's Friends to theſe Proceedings.

A little before the main Queſtion about paſſing the Duke's Bill, the Dutcheſs's Agents handed about a Paper, wherein they endeavour'd to ſhew the Hardneſs of her Caſe; the firſt Part of which being already inſerted in the beginning of theſe Proceedings, I ſhall give the Reader here only the latter Part of it.

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The Dutcheſs thought herſelf under a Neceſſity of complying with all the Orders of the Houſe of Peers; and accordingly, as well as ſhe could, made her Defence, tho' leſs than a Week's Time was allow'd her for doing it; and upon examining the Evidence of the Duke's Witneſſes, many Contradictions appear'd; ſome whereof follow, as doth appear by the Depoſitions taken in Writing, and now remaining in the Houſe of Peers.

For *Hauſeur* the Foot-man ſwears the Dutcheſs was at the *Cock-pit* when and before he came to live with Sir *John Germaine*, and that he continu'd there 15 Days after, and that after the Dutcheſs left the *Cock-pit* ſhe went to *Vaux Hall.*

Vaneſſe the Cook-Maid ſwears *Hauſeur* came to Sir *John* when the Dutcheſs was at *Vaux-Hall.*

Hauſeur ſwears that the 8th of *February* 92 he left Sir *John*'s Service, when the Trial was between the Duke and Dutcheſs in Parliament, and after liv'd privately ſix or eight Weeks, 'till he and *Vaneſſe* could get to *Holland*, and arrived there in *Eaſter* following.

And yet in another Place he ſwore he deſir'd Leave to go, and afterwards, that he alſo went for *Holland* as ſoon as the Wind was fair.

But note, all the Evidence was cloſ'd, and order'd to be ſumm'd up the 9th of *February*, ſo that he needed not afterwards to have gone. And whereas he inſinuates that he and *Vaneſſe* were ſecreted, and kept from being Witneſſes.

Note, It doth no where appear that either he, or *Vaneſſe*, were ever thought on for Witneſſes: *Hauſeur* ſwears he return'd again to Sir *John* in the Summer

Summer 1692, being often ſent to by Sir *John*: Whereas *Bayly*, another of the Duke's Witneſſes ſwears, he did not return again to Sir *John* in two Years after he went away, *Bayly* the Witneſs being all that Time, and three Years before, a Servant in the Houſe.

Note alſo, That this very Summer, 92, to wit, in *Eaſter* Term, the Duke brought his Action againſt Sir *John*, which was try'd *Michaelmas* Term 92; at which Time it had been more likely if Sir *John* had believ'd he could have done him any harm, he ſhould have kept him in *Holland*, rather than have ſent for him over; eſpecially conſidering that this Fellow afterwards ſwears, Sir *John* ſwore in a Rage, this Fellow wou'd betray him.

Hauſeur being aſk'd who ſent for *Vaneſſe* over; he anſwer'd, that after he had promiſed the Duke and Lord *Howard* to ſpeak the Truth of what he knew, they deſir'd him if he met *Vaneſſe* to deſire her to come over, and ſpeak the Truth of what ſhe knew.

And being aſk'd how long after he met *Vaneſſe*, anſwer'd, about twelve Months ſince.

And being aſk'd when was the firſt Time he ſpoke to her about her coming over to ſpeak the Truth, anſwer'd, 'tis about a Year ſince.

And being aſk'd how long it was ſince they reſolv'd to come over, anſwer'd, twelve Months.

Vaneſſe being aſk'd, Whether ſhe was not ſent for from *Holland* to be a Witneſs? anſwer'd, ſhe knew nothing of it till eight or nine Weeks ago.

Vaneſſe ſwears ſhe was ſent away on Account of the Trial.

Whereas *Peacock*, *Hawkſworth*, and *Knight*, three Servants of the Dutcheſs's, ſwore the Dutcheſs turn'd her away before the Trial, for keeping Company with *Dutch* Soldiers; and they do ſwear a new Cook-Maid there before the Trial.

Hauſeur ſwears, he had a Key of the Door going into the Park, and could come in when he would.

And yet owns he knew but two of the Servants, one whereof is long ſince dead.

And alſo the Dutcheſs's Servants ſwear they never heard any Body had a Key; and that if any Page 592. Key had been, they muſt have known of it. They alſo prove the ſhutting up, bolting, and chaining the Door every Night, and opening it every Morning; and but one of the Servants remembers ever to have ſeen him at the Door, and then he rung the Bell; but came only to ſee a Country-Woman of his, and to carry Letters to *Holland*, and brought Anſwers back to her; but was not admitted beyond the Paſſage.

Hauſeur and *Vaneſſe* ſwear, they ſaw the Dutcheſs and Sir *John* in Bed together at *Mill-Bank*.

The Dutcheſs's Woman ſwore, ſhe has put the Dutcheſs to Bed, and taken her up, every Night and Morning, ſeveral Years, and never ſaw him in the Houſe. And two others ſwear, they were conſtantly in waiting, Night and Morning, and poſitively deny any Knowlege of any ſuch Thing; and ſay, they never ſaw *Hauſeur* there; and that *Vaneſſe* was never admitted up Stairs, ſhe was ſo dirty a Creature, much leſs to dreſs or undreſs the Dutcheſs, as ſhe pretended often to have done.

Vaneſſe ſwears, ſhe could not tell the Places ſhe has been at theſe ſix Weeks laſt paſt. Whereas, Mr. *May* and two other of the Duke's Servants ſwear ſhe has been fourteen Days in the Duke's own Houſe, with the full Liberty of the Houſe.

Vaneſſe being aſk'd, Whether ſhe ever told any Body of the Occaſion of her going away? ſhe ſwore, Yes; ſhe told it to a great many in *Holland*, and not here.

Yet being afterwards aſk'd, Whether ſhe never diſcover'd that ſhe was ſent out of the Way? ſhe ſwore directly, No.

Theſe are ſome of the many plain Contradictions and Diſproofs of theſe Evidences, beſides the great Improbability in their own Nature, in ſeveral Things ſworn.

But

But it is alſo to be noted, that *Hauſeur* left Sir *John*'s Service in a Diſguſt; and ſo 'tis prov'd by *Bayly*, another of the Duke's Witneſſes; and that what *Hauſeur* ſwore, could be nothing but Spight and Malice: Yea, 'tis prov'd on the Dutcheſs's Part, that he ſwore he would find a Way to be reveng'd of him, and that perhaps it might not be long firſt: And Mr. *Strange*, Mrs. *Pitts*, and her two Maids, who could have depos'd very materially for the Dutcheſs, refus'd to appear, tho' often ſummon'd, being Perſons not in the Dutcheſs's Intereſt, or Power.

This *Hauſeur* has been out of Place ever ſince he left Sir *John*'s Service, *April* 96, and is ſo ſtill, as he ſwears; and ſo in Conſequence likely to be neceſſitous.

Note alſo, That *Hauſeur* ſwears Sir *John* gave him ſeven Guineas to pay the Charges of himſelf, *Vaneſſe*, and another, which were order'd to be kept private till they could be ſhipp'd off; and alſo for their Paſſage into *Holland*, which was in Time from the 8th of *February* 92, till *Eaſter*, which does not look like a Bribe for a Secret of this Nature, being hardly ſufficient to maintain three People, and pay their Lodgings for two Months.

Hauſeur would be thought a mighty Confident, ſo as to have a Key to the Dutcheſs's Houſe, to come in and go out when he pleas'd; and yet, as well acquainted as he pretended to be with the Houſe and the Dutcheſs's Bed-Chamber, he could not tell on what Floor it was, nor what Furniture it had, nor whether wainſcoted or hanged. And when he was ask'd which Way the Windows of the Bed-Chamber look'd, he trifled in that Queſtion, and concluded, he could ſee the Water, but was afraid to go near the Window, for fear of being diſcover'd; and yet had no Scruple of coming into the Houſe with his Key at any Time. Theſe Things being obſerv'd, it muſt be conſider'd, that the Facts now in Effect charg'd againſt the Dutcheſs, are ſuggeſted to be done many Years ſince; and were debated and conſider'd before the Peers,

before the Rejection of the two firſt Bills; and long before the Agreement for putting an End to all Controverſies and Debates. Now 'tis very hard to put the Dutcheſs to Account again for thoſe very Facts, conſidering that after eight or nine Years many People are dead, others diſpers'd, and not in a little Time to be found out, and Circumſtances of Times and Places (which in the Nature of all theſe Caſes is almoſt all that is left to diſcover a Falſity) forgot.

The Dutcheſs is alſo under the unavoidable Neceſſity of proving a Negative againſt down-right Swearing, and that without any Matter introductory; and alſo by two mean Servants, the one turn'd out of her Place for keeping Company with Foot Soldiers, and the other leaving his Place in Diſguſt, becauſe he could not have the Play-Money.

Maſters are already too much in the Power of their Servants, and if they Charge their Maſters with Adultery, Felony, and even Treaſon, it is not eaſily in the Power of the Maſter to defend himſelf againſt down-right Swearing; Servants having thoſe Opportunities of the Knowlege of Times and Places, and Company, which cannot be deny'd, or avoided, and which others have not; whereupon they may frame and build falſe Evidence; and many Times are of ill Principles, and deſperate Fortunes, and of Tempers very revengeful; ſo that whoever turns away a Servant, he is in his Power for his Eſtate, Honour, and even Life itſelf; and therefore for the Safety and Freedom of Families in other Countries, they are not permitted to be Evidence againſt their Maſters in any Matter Criminal whatſoever.

Note alſo, that the Dutcheſs thinks, ſhe as an *Engliſh* Subject has, by *Magna Charta*, the ſame Right to a Trial in the legal and ordinary Way of Juſtice, as the reſt of the King's Subjects; eſpecially conſidering that there never yet was in *England* one Precedent of a Bill exhibited in Parliament to diſſolve a Marriage at the firſt Inſtance, without any previous Proceedings in the Eccleſiaſti-

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cal Courts; (which in theſe Caſes is the Law of the Land) and not above 5 or 6 Bills in above 600 Years ever paſs'd to diſſolve Marriages, or make ſecond Marriages good; even after there had been a Divorce in the Spiritual Courts, and thoſe Bills too in Caſes generally where the Husbands were without any Recrimination.

No Impediment appears why the Duke ſhould not have endeavour'd a Divorce at Law before he had attempted a Bill to diſſolve the Marriage, for any Application to the Legiſlature for the Trial of Matters of private Right is improper, becauſe there are proper Judicatures that give that Remedy the Law allows.

To aſk any Thing of the Legiſlature in private Cauſes between Party and Party beyond what the known Laws in Force give, ſeems to be improper; becauſe,

1. It is to make a Law in one Perſon's Caſe, which is not the Law in another's. Page 593.

2. It is to retroſpect Actions, and after the Fact to augment or alter the Penalty. Our Laws are certain and known, the Perſons may conform their Actions to them.

3. The Courts and Forms of Law are equally the Subjects Right with the Law, and the Application to the Legiſlature takes away all the Right of Form and Charging: Whereas a Certainty in Time to Anſwer, and Exceptions to Witneſſes, and other legal Defences of the Fact, cannot be deny'd the meaneſt Subject.

The Conſequence that ſhort and ſummary Ways of Proceedings may have on the Settlements of Eſtates and Families may be very dangerous; and tho' the Duke of *Norfolk*'s Bill paſs'd the Houſe of Peers, yet a great Number of the Peers, both Spiritual and Temporal, enter'd their Proteſts againſt its paſſing, and their Reaſons for it.

It ought to be no Prejudice to the Dutcheſs, that the next Heir preſumptive to the Duke doth not yet appear to be a Proteſtant; becauſe when a

Bill

Bill which hath lately paſs'd both Houſes is become a Law, it is not likely that Noble Family will be without a Proteſtant at the Head of it.

If any of the Witneſſes formerly examined on the Bill in 1691 be now again produc'd, it is humbly apprehended, that as the Validity of their Teſtimony they then gave was totally overthrown by a greater Number of Witneſſes, ſo it will be again, tho' under the Diſadvantage of the great Diſtance of Time.

On *Tueſday* the 19th of *March* 1699, being the Day appointed for reading the Bill for diſſolving the Marriage of the Duke of *Norfolk* the ſecond time, and hearing the Council on both ſides thereupon: Before the Council were called in, to prevent the Inconvenience of Peoples crowding into the Houſe, an Order was made, That none but the Council, Sollicitors and Parties ſhould be called in, and that the Witneſſes ſhould have notice to attend without, ready to be called in when the Houſe, thought fit. It was intimated alſo, that if the Duke and Dutcheſs ſhould come into the Houſe they ſhould be accommodated with Chairs. This being a Reſpect ſhewn to the Nobility when they come into the Houſe.

The Council, Sollicitors and Parties being call'd, the Bill was firſt read, and then the Lady Dutcheſs's Petition (already recited.)

	The Council for the Dutcheſs were.	The Council for the Duke.
The Council on both Sides.	Sir *Thomas Powis*.	Mr. Serjeant *Wright*.
	M. *Dodd*.	Mr. *Northey*.
	Dr. *Pinfold*.	Mr. *Atwood* and Dr. *Oldiſh*.

Mr. Speaker having intimated, that the Houſe would firſt hear the Council for the Lady Dutcheſs, according to the Prayer of her Petition,

Sir *T. Powis* for the Dutcheſs.

Sir *Thomas Powis*, one of her Grace's Council, obſerved, That this Bill, in the manner it was brought before them, was the firſt of the kind that

that was ever attempted in that Houſe; that another indeed of the ſame nature had been attempted twice in the other Houſe ſeveral Years ago, and was as often rejected: and he hoped they would take Notice, that this was a Bill of Divorce in Parliament, in the firſt Inſtance, without a previous Proſecution to examine the Fact in any of the ordinary Courts that had Authority in theſe Matters.

That this was a Bill not only to divorce the Dutcheſs upon a very ſhort Warning, who had been married three and twenty Years, but to render her infamous to all Poſterity by Act of Parliament, and at the ſame time took from her the legal Trial of the Fact, which ſhe was ſurely entitled to, as well as the meaneſt Subject: Nor was there any reaſon aſſigned, why his Grace had not proceeded in the ordinary Courſe. That it was nothing more but a Suit between Party and Party, merely a Cauſe matrimonial between Husband and Wife, begun originally in the Houſe of Peers: And as the beginning of Cauſes in that Houſe between Party and Party had hitherto been ſtrongly oppoſed, becauſe it deprived the Subject of his legal Defence, he hoped it would always be ſo.

That this was a ſummary Proceeding with a witneſs; being begun the 16th of *February*, and but a Week's Time given the Party accuſed to be heard, and tho' they might with reaſon enough, perhaps find fault with the tedious Proceedings in ſome Courts; yet a ſummary Proceeding without due Warning, or any certain way of making a Defence by any known Rules, without Oath (as here) and without appeal, and being for all that a Perſon had in the World, was ſuch a ſummary Way as was very terrible.

In Kingdoms where the Government is arbitrary the Proceedings are uſually in a ſummary Way, and if they were in a Place where Judges were infallible, where there were no falſe Witneſſes, and where Truth could be diſcovered in an Inſtant, a ſummary Way would be the beſt; but Page 594.

but ſince Men were fallible, ſince there was Paſſion and Partiality in the World, ſince notorious Perjuries were frequently detected, ſome things difficult to be diſcloſed, and required time to examine: From thence it proceeded, that there were ſettled Courſes for determining all Differences between Party and Party in *England*, and known Rules for relieving Perſons againſt ill Judgments that might be obtained.

That the Example in this Caſe would be of mighty Conſequence to all Parents, who perhaps might make hard Shifts to give their Daughters Portions, and think they had made Proviſion for them and their Children. If their Daughters ſhould be ſent home to them upon a Fortnight's warning, and Witneſſes examined againſt them, without their knowing the Places of their abode. This was too great a Temptation to be laid in the way of ſuch Men as might grow weary of their Wives: Deſire of a better Fortune, or a Change, and a thouſand other Motives there might be to revive old Quarrels, if they ſhould ſet ſuch a Precedent for divorcing People in this ſummary Way.

A Bill in Parliament to divorce a Woman without a legal Trial was the ſame thing, as a Bill of Attainder againſt a Man for Treaſon; one forfeits the Eſtate, corrupts the Blood, and takes away his Life, and the other does little leſs; for the Bill was to forfeit her Jointure, defame her Perſon, corrupt her Reputation, and tho' it left her Life, it was left with Infamy worſe than Death. We have a happy Conſtitution if we can keep it; every Man can call his Wife his own, and his Eſtate his own, becauſe it can't be taken away without a legal Trial; but if we go into thoſe extraordinary Courſes when the Courts of Law are open, without any previous Examinations of the Caſe, he did not know where it would end.

Magna Charta was not to be forgotten, where ſo much Care was taken for preſerving Property and the Right of Trials: *Quod nullus deſtruatur, nec ſuper eum ibimus nec ſuper eum mittemus niſi per legale Judicium parium ſuorum vel per legem terræ.*

terræ. The Eccleſiacal Law was the *Lex terræ* in this Caſe; and if that was taken away without Reaſon, Why might not the Law in any other Caſe?

In time of publick Difficulties indeed extraordinary Laws have been made, grounded on extradinary Reaſons; but in a time of full Peace, when Matters might be decided according to the Laws of the Land, he could ſee no Reaſon for this Proceeding.

There have not been ſix Inſtances of this Kind in ſix hundred Years; and in thoſe few there have been, they proceeded in another Manner than they have done in this. 'Tis true, where Perſons have had a fair Trial in a proper Court, and Sentence pronounced according to the Law of the Land, there are ſome Inſtances where an Act of Parliament has been obtain'd to ſtrengthen the Sentence, and carry it farther than the Eccleſiaſtical Court will allow, even to the diſſolving the Marriage, and enabling the innocent Party to marry again: But all thoſe Acts are founded on the Sentence of thoſe Courts, and recite thoſe Sentences as an Inducement for paſſing thoſe Acts.

Inſtances of Acts enabling People Divorc'd to marry again. Pag 595.

The firſt Caſe he cited was, that of the Marquis of *Northampton*, 5 *E.* 6. He was married to a Daughter of the Earl of *Eſſex*, and ſhe elop'd from him, and a Divorce was obtain'd in the Eccleſiaſtical Court: Whereupon the Marquis married a Daughter of the Lord *Cobham*, and four Years after he was married, procur'd an Act of Parliament for ratifying the ſecond Marriage, in which the Sentence of Divorce is recited.

The next was the Caſe of the Lord *Roſs*, afterwards Earl of *Rutland*, where the Notoriety of the Fact, perhaps, was as great as is pretended in this Caſe; and here the Act follow'd a Divorce in the Eccleſiaſtical Court, and was obtain'd with ſuch Difficulty, that it was four Years in paſſing, (*Viz.*) from the Year 66 to 70.

The third was the Caſe of Mr. *Lukener*, within our Memory, who had been groſly abus'd by his Wife, by Elopement and open Adultery: But here the

the Act went no farther than to diſable the Children born, while ſhe liv'd in open Adultery; and this Act alſo recites a Sentence of Divorce.

There was indeed a Caſe that happen'd not long ago, (that of Mrs. *Wharton*) where the Lady was taken away by Force, and pretended to be marry'd; and an Act of Parliament came afterwards, and declar'd that Marriage void: but there was a Proceeding at Law with a Witneſs; for the Perſon who put the Force upon her, was actually try'd and executed; and this Law was only declaratory, to ſatisfy all Perſons that might be affected by it, that the Marriage was abſolutely Void.

The laſt he mention'd was the Caſe of the Earl of *Macclesfield*; but here he obſerves, there were previous Proceedings in the Eccleſiaſtical Court. There was a Libel exhibited againſt the Lady, Witneſſes examin'd againſt her, and a regular Proſecution, in order to a Sentence of Excommunication. And then the Earl petition'd the Houſe of Peers, ſetting forth, that there had been ſuch a Proceeding, and that ſhe ſtood in Contempt, having been proſecuted as far as that Court could go; and in all Caſes he had heard of a Divorce by Act of Parliament, there had been previous Proceedings in the Eccleſiaſtical Court. But now the firſt Application was to that Place, which in all theſe Inſtances was, and he thought ought to be, the laſt Reſort: This Method might not pleaſe the Duke indeed, his Grace they knew was in Haſte, and for cutting the Knot aſunder by the Legiſlative Power; but he hop'd from theſe Precedents they would think it more reaſonable it ſhould be firſt untied, or at leaſt looſened, by a judicial Proceeding; for he did not ſee how in Juſtice, the Parliament could deny the like Remedy, in the like Caſe, to any other, if they paſs'd this Act: That Nothing guarded them from infinite Applications of this Nature, but the requiring Perſons to take the ordinary Courſe firſt, and come round about to the Parliament as the laſt Remedy, to carry the Sentence, perhaps, further than the Eccleſiaſtical Court could do; but if they could

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come directly thither, their Lobby would be crowded with Petitioners of the like Nature, to the Obſtruction of all other Buſineſs: A Committee for Adultery would have full Employment.

If a poor Man upon this Precedent ſhould apply to them it might look ſtrange; but yet in Juſtice there was no reſpect of Perſons. The Law in *England* is *Unum Pondus & Una Menſura*: And if this ſhould be done in caſe of a Great Rich Man and not for a Poor Man, they might well ſay, *That our Laws are like the Spider's Web, which only hold the leſſer Inſects*; and if this be one of the Privileges of Peerage, it was never thought on before.

It has been objected in another Place indeed, *To what Purpoſe ſhould they apply to the Eccleſiaſtical Court*, which could not Divorce a *Vinculo*. This might be a Reaſon for their coming to the Parliament afterwards, he allow'd; but was no Reaſon for their coming thither firſt, unleſs they would ſay, that all Cauſes ought to be begun in Parliament. Page 596.

He obſerv'd further, that this Bill was general, not reſtrain'd to Time or Place, Deſcription or Circumſtances relating to the Fact: Whereas the Duke, who complains of this Matter, as if ſome Misfortune had happen'd to him in *April* 1694, by the Advice of his Council, with his Friends about him, after a long Time of Agitation, had enter'd into Articles of Agreement with his Wife the Dutcheſs, wherein every Thing was ſettled to his Grace's Satisfaction: He had reap'd the Benefit of theſe Articles by receiving a great Sum of Money; and the Dutcheſs had parted with her Intereſt in that Noble Manor of *Sheffield*. His Grace had all that on his Part he was to have, and had executed abundance of Deeds in purſuance of that Agreement: And now after all, upon a Proſpect of another advantageous Marriage perhaps, moved the Parliament to give him Liberty to depart from ſo ſolemn an Agreement. In what a Condition are People that have purchaſed their Peace, as the Dutcheſs has, if he may go back beyond this? for the Bill has no Reſtraint.

Surely

Surely all Reconciliation between Man and Wife, all Acts towards them, and all Acts of Kindneſs are to be favour'd. Matters of Divorce are of an Odious Nature, and not to be encourag'd after ſuch a compoſure of Differences. There are Inſtances of ſome who have taken their Wives again, and liv'd comfortably afterwards. To what End are all Acts of Pardon and Limitation, but that People ſhould not be charg'd with Offences at ſuch a diſtance of Time as it is impoſſible for them to defend their Actions: The Law hath appointed a limited Time, beyond which Perſons ſhall not go back; and this the Duke had done by Articles, which they look'd upon to be concluſive before God and Man, and hop'd that this Cauſe that had been precipitated here out of Time, ſhould be remitted to its proper Place, where her Grace would give the Duke a Meeting, if they were not reconciled before that Time.

Mr. *Dod* for the Dutcheſs.

Mr. *Dodd*, another of her Grace's Council, obſerv'd, that this was a Bill to diſſolve a Marriage after twenty-three Years Continuance, without ſo many Days Notice as the Marriage had continued Years, to ſerve the Purpoſe of one particular Perſon: That it was a Law after the Fact committed, whereas the Law ought to precede the Fact: That it was a Bill from the Lords, and he did not know but in a little Time the Lords would preſcribe to it. There was not one Bill of this Nature for a Commoner, unleſs in the Lord *Roſs*'s Caſe, who was of a Noble Family: That it was not pretended by this Bill the Dutcheſs had any ſpurious Iſſue, which was a material Circumſtance. That theſe Bills were not to be made Uſe of but upon extraordinary Occaſion, and the utmoſt Extremity. It was the firſt Inſtance of this Nature where there had been no previous Proceedings in any other Court: If the Eccleſiaſtical Courts had Juriſdiction in any one Thing, it was in Caſe of Matrimony, and there the Dutcheſs would be allow'd to make her Defence, as well by Recrimination as by Examination of Witneſſes; that ſhe might have Appeal'd to a ſuperiour Court, and

Page 597.

from

from thence to the Delegates: Theſe were proper Defences that the Party might not be ſurpriz'd, and if injur'd, might be reliev'd in another Place. Such Proceedings he thought were neceſſary to go before a Bill of this Nature, that the Fact might be Evident; and then he ſhould not have opened his Mouth againſt it.

By the ſame Reaſon that a Bill was brought in to diſſolve a Marriage, they might in a little Time have a Bill to marry People, which might be thought a more expeditious Way in Caſe of Contracts, than the Proceedings in the Eccleſiaſtical Courts: He hop'd they would be tender of making a Precedent. He did not know of any Bill before this to Convict a Woman of a ſuppos'd Crime: They had always left theſe Things to the Determination of the Law in the ordinary Courſe; and he thought it ought the rather to be ſo in this Caſe, becauſe there was no Pretence of a ſtop being put to the Ordinary Proceedings; no Abſence of Witneſſes; no Incapacity; but his Grace might proceed there againſt the Lady, and there ſhe would have her proper Defence, and till then there was no Crime to judge upon; and therefore he hop'd they would Reject the Bill.

Dr. *Pinfold* for the Dutcheſs.

Doctor *Pinfold*, who was alſo retain'd by the Dutcheſs ſaid, that the Eccleſiaſtical Law was as much the Law of *England* as any other: That this Bill being to diſſolve the Bond of Marriage, and give leave to marry again, he deſir'd to ſhew what our Eccleſiaſtical Conſtitutions were in that Caſe, and that thoſe Conſtitutions were founded on the Canons and Decrees of Council.

The Caſes where the Bond of Marriage was to be diſſolv'd, were but few, and theſe aroſe before Marriage, *Viz.* In the Caſes of Precontract, Nonage, or Conſanguinity. There the Bond was broken by the Sentence of the Judge, and the Perſon had Liberty to marry again; but for what happen'd afterwards, whether it were the Caſe of Adultery, or any Thing elſe, the Eccleſiaſtical Law had been very careful not to diſſolve the Marriage.

By the 48th Canon, If any Layman put away his Wife, and married another, he was to be excommunicated: In the Council of *Arles* held *Ann.* 314, it was decreed, That if a Man took his Wife in Adultery, he ſhould be forbidden to marry; Counſel ſhould be given him not to marry while ſhe liv'd, tho' ſhe was an Adultereſs. In the *Neopolitan* Council held in 402, it was decreed, That in Caſe of a Divorce, the Parties ſhould not marry again, but remain unmarried, or be reconcil'd. In the *African* Council, *Can.* 102, it was decreed, That the Parties divorc'd ſhould remain unmarried. This was the Senſe of the antient Canons and Councils, and theſe were receiv'd into the *Engliſh* Eccleſiaſtical Conſtitution. In the 15th Year of Queen *Elizabeth*, in the Chapter of Divorces, it is ſaid, That upon a Sentence of Divorce, there muſt be an Admonition and a Prohibition, that the Party ſhall not marry again. And in 1602, in King *James*'s Reign, there was a further Proviſion, That the Parties ſhould give Bond they would not marry again. This was certainly our Eccleſiaſtical Conſtitution, and founded on the Senſe of antient Canons.

That had the Dutcheſs been allow'd that Trial, which of Common Right was due to the meaneſt Subject, ſhe would have had the Advantage of her Challenges, which ſhe could not have here. There the Witneſſes muſt give an Account of themſelves; which had not been done by any of them. The Lady might have offer'd Exceptions to the Witneſſes, and have had a Commiſſion into *Holland*, to have examin'd how theſe Witneſſes behav'd themſelves, and whether they were to be credited: There ſhe would have had Liberty to give an Account how this Deſign began; (for it ſeems to have began a Year and half ago) and there ſhe would have had the Advantage of that thorough Reconciliation, made in the Year 1694; and the Advantage of Recrimination, from which ſhe is debarr'd by this Bill; for by the Law of Divorces, if ſhe can prove the ſame Thing againſt her Husband, then Faults muſt be ſet one againſt the

Page 598.

the other. and he can't have the Advantage of his Prayer.

Mr. Serjeant *Wright* being of Counſel for the Duke ſaid, that his Grace came there as a Suppliant for that Bill, for Redreſs againſt the higheſt Injury that could be offer'd; the Abuſe of his Marriage-Bed, for which no other Court could afford him Relief. The Doctor who ſpoke laſt had admitted, that there could be no Divorce *a Vinculo Matrimonii* in their Courts: And to ſend them thither for Relief, where they told them before-hand they would have none, was in Effect to tell them, they ſhould have none at all. That the Reaſon on which the Bill was founded, was the Adulterous Converſation of the Dutcheſs; not for one ſingle Act, but a continual Series of the like Acts for many Years, which was begun in 1687, and carried on to the latter End of 95. **Mr. Serjeant *Wright* for the Duke.**

They deny'd that it was the firſt Bill of this Kind, for the Earl of *Macclesfield*'s was, to all Intents and Purpoſes the ſame: 'Twas true, the Earl of *Macclesfield* had been firſt in the Spiritual Court; but 'twas as true, that he came into Parliament before any Sentence paſs'd in the Spiritual Court; and to what Purpoſe was his going thither, if he did not ſtay for the Determination of that Court, if the Determination of that Court was to have any Weight with them? That they did not come there for any Thing the Spiritual Court could grant them; they could only make a Separation *a Menſa & Thoro*, but the Bond of Marriage was to be continued ſtill; and what was this but to puniſh the Innocent inſtead of the Guilty? What would the Dutcheſs deſire more, than to be ſeparated from the Bed and Board of her Husband, and to be left at Liberty to accompany Sir *John Germaine*? They came therefore to the Parliament to diſſolve this Marriage, for that which was allow'd by many learned Men a juſtifiable Reaſon; *for Adultery committed by the Wife.* It was expreſsly ſaid, *That a Man ſhould not put away his Wife, except in Caſe of Fornication*; which Text plainly allow'd, that *for Fornication* a Man might put away his Wife. He agreed, that in the Mar-

quis of *Northampton*'s Caſe, the Act did recite the Proceedings in the Spiritual Court, but that Caſe was ſtronger than this; for there the Marquis married in the Teeth of their Canon Law, and came afterwards into Parliament to make the Marriage good; and there the Divorce was no Ingredient towards paſſing the Bill, but the Parliament enacted the Marriage to be lawful. And in the Lord *Roſs*'s Caſe there was no mention of a Divorce; the Witneſſes were examin'd again in both Houſes, and the Children were baſtardiz'd, on proving that the Lord *Roſs* and his Lady had not lain together for many Years, and that ſhe had kept Company with others; ſo that the Parliament did not found the Bill on what had been done upon the
Page 599. Divorce: In the Lord *Macclesfield*'s Caſe, the Proceedings in the Spiritual Court were not recited in the Bill, but only an expreſs down-right Charge of Adultery: We inſiſted on the other Side indeed, that the Parliament could not proceed in it, becauſe this was to take upon them an Original Juriſdiction; but were anſwer'd then by a learned Gentleman againſt the Bill, (Sir *Thomas Powis*) that it was in Vain to go into the Spiritual Courts, for they could not give the Remedy that might reaſonably be expected. I ſhall mention a Caſe or two where there have been no Proceedings in the Spiritual Court; one of them the Caſe of Mrs. *Knight*, who was married *infra Annos nubiles*: Every one knew that a Marriage *infra Annos nubiles* was a good Marriage; and if the Woman was above nine Years of Age, ſhe ſhould be endow'd: And yet for ſome irregular Proceedings, without going into the Spiritual Court, the Parliament diſſolv'd that Marriage, and enacted, that ſhe ſhould not marry till a certain Age.

To what purpoſe ſhould we Travel 3 or 4 Years in the Spiritual Court, as they would have us, before we come into Parliament? This Houſe would not let theſe Depoſitions be read, but would examine the Witneſſes themſelves.

They ſay this is a very ſummary Way of Proceeding; but a Bill was brought in ſeveral Years ago, and the

the Witneſſes were ſent out of the Way while the Matter was under Examination, by the Dutcheſs and Sir *John Germaine*: And he hop'd a Proceeding of this Nature ſhould never be baffled, by keeping the Evidence out of the Way: No body could imagine the Parliament would paſs the Bill, without a due Examination of Witneſſes, and legal Proof of the Fact; and then, what Matter was it, Whether the Proof was made here, or in ſome inferiour Court?

The Doctor obſerves, that the Woman might recriminate; and if the Husband alſo was Guilty, they muſt ſet one Fault againſt the other; but he did not think the Injury to Families was equal: A Man by his Folly of this Kind, brought no ſpurious Iſſue into the Family; whereas the Woman depriv'd the Husband of any legitimate Iſſue.

As to the Articles of Agreement that were mention'd, they did not Authorize the Dutcheſs to uſe her Body as ſhe plea'd; there was no Agreement ſhe ſhould live according to her own Pleaſure: She was to have the Uſe of the Houſhold Goods and Servants, and to live where ſhe pleas'd; but this would not juſtifie the Liberties ſhe had taken.

'Tis ſaid theſe were Matters of a long ſtanding; and ſo indeed they were, for they ſhould prove this Scene of Adultery for eight Years ſucceſſively: That the Servants who were privy to it, were ſent to *Holland*; but no ſooner was the Bill baffled, but the Man was ſent for again, and the ſame Converſation continued between the Dutcheſs and Sir *John Germaine* as before he left *England*, to the Year 1692, and to the Year 1695; only they were ſomething more Cautious, and People were not admitted ſo familiarly to ſee them in Bed together as before.

As to the Statutes of Limitations, that was made to put an End to frivolous and vexatious Suits, after a long diſtance of Time: Was there the like Reaſon that a Man ſhould not complain when he had receiv'd the greateſt Injury that could be done him: They were pleas'd to recommend it to the

Duke, to go into the Eccleſiaſtical Court till next Seſſions; but ſince he had ſuch good Reaſons to come here, he hop'd if they prov'd the Fact, they would not diſmiſs a Complaint of that Nature without ſuitable Relief.

Page 600. Mr. *Northey* for the Duke.

Mr. *Northey* being alſo Council for the Duke ſaid, That there had been three Witneſſes examined upon Oath in the Houſe of Peers before the Bill paſs'd there; and that the Witneſſes that had been produc'd on the other Side, were ſo far from contradicting theirs, that they really confirm'd them.

He obſerv'd, that the learned Doctor would have the Canon Law govern here as it did in their Courts, but that this Bill was to relieve againſt the Canon Law; and as to the Argument that the Witneſſes could not be upon Oath here, he thought that would not prevail in this Place. As to that Objection, that theſe Proceedings were in a ſummary Way, the ſame might be objected to all Proceedings before a Jury; they had no Notice there what Witneſſes would be produc'd.

In the Earl of *Northampton*'s Caſe, the Bill was not to confirm the Sentence of the Eccleſiaſtical Court, or enable them to marry, but to deliver them out of the Hands of that Courts that ſaid it was not lawful in that caſe to marry, for they were married before. And in the Lord *Macclesfield*'s and Lord *Roſs*'s Caſes there was no Regard had to the Proceedings in the Eccleſiaſtical Court: 'Twas true, when they came before the Parliament without ſuch a previous Proceeding, they came under that Diſadvantage, that they would expect plainer Proof: And they ſhould make the Facts ſo plain, that it could never be denied. That after the Duke had miſcarried in his former Bills, by the Witneſſes being ſpirited away, the Dutcheſs ſubmitted to a Separation by Articles, which was all the Duke could have pretended to obtain by the Eccleſiaſtical Law. And they follow'd her upon that, and came there to enforce that Separation, and hop'd the Duke ſhould be deliver'd from this Wife, and empower'd to marry again. They thought no body could be hurt by a Precedent

that

that deliver'd them from a Law which was put upon us in the Days of Popery.

Doctor *Oldiſh* being retain'd for the Duke ſaid, he obſerv'd the great Objection againſt the paſſing the Bill, was, That Witneſſes had not been examin'd in a proper Court; and it was true, generally ſpeaking, it ought to be ſo. But here was a great Exception to that Rule, which was *the Notoriety of the Fact*, and in that Caſe they might begin with Execution. When the Dutcheſs formerly came to give her Anſwer in the Houſe of Peers, ſhe declared, that in the Year 83, or thereabouts, ſhe went out of *England*, and return'd about the time of the Revolution. And it plainly appear'd, beyond all Queſtion, that ſhe was at *Lambeth*, and went under the Name of the Lady *Beckman*, and was attended by one *Keemer*, who went by the Name of *Goodman*; and beſides this, there were Witneſſes that ſpoke to ſeveral Facts. They had that which amounted to a Demonſtration. Dr. *Oldiſh* for the Duke.

As to the Canons that prohibited a Divorce *a Vinculo*, it was an Eccleſiaſtical Conſtitution that was againſt the Law of God; for our Saviour ſaying that a Man ſhall not put away his Wife, except in caſe of Fornication, it was plain that for Fornication he might.

It was inſiſted indeed, that there had been a Reconciliation between the Duke and Dutcheſs, and that a Reconciliation ſhould drown all Things before that time. But then the Law takes Notice in caſe of a Relapſe that did *recrudeſcere*, rubb'd upon the old Sore, and then that which was before laid aſleep, was brought upon the Stage again, and would return with greater Vengeance; and they had evident Proof of her living in the ſame manner ſince, as ſhe had done before. Page 601

Sir *Thomas Powis* reply'd, That the Caſe of Mr. *Knight*, which had been mentioned, was the Caſe of an Infant, pretended to be married *Infra Annos nubiles*, which being no Marriage, there could be no Divorce, the Marriage was only declared void. And the other Caſe of Mrs. *Wharton* Sir *Tho. Powis* replies.

ton was no Marriage neither, for Marriage muſt be by Conſent, and that was a Force, and conſequently there could be no Divorce there; and the other Caſes mentioned were as little to their Purpoſe.

As to what had been urged, that the Crime did not ſeem equal between the one and the other Party, and therefore the Doctrine of Recrimination had been ridicul'd, he apprehended the Doctor to be right in that Matter; for it would be hard if a Man ſhould marry a young Woman, and give her an ill Example in his own Family, (he did not ſay it was this Caſe) and bring her acquainted with looſe and ill Company, and by his Example or Provocation lead her into the ſame Offence: Would that Man deſerve to be rewarded with a new Wife and another Portion, becauſe his firſt Wife had only follow'd his Example? And if a Man brought no baſe Iſſue into the Family, it often happen'd that thoſe who ſtray'd, brought home that to their Wives which would ſtick by them longer than their Children.

It was never pretended that the Articles would juſtify her living in Adultery, but they were a ſufficient Ground for her living ſeparately, and ſo they uſed them: They uſed them likewiſe as an Act of total Oblivion and Remiſſion of any Thing that happened before that Time, and to ſuch Purpoſes he hop'd they ſhould be ſacred.

And on the whole Matter, had the Council on the other ſide ſaid one thing but what tended to bring all Cauſes of Adultery before them, had they diſtinguiſh'd this Caſe from that of any other Perſon; and if they had not, he did not ſee how any but Fools ſhould from thence forward go into the Eccleſiaſtical Courts for Relief; for ſays Serjeant *Wright*, they cannot give them a final Relief, and enable a Perſon to marry again. *But here is a Relief to be had worth a Man's having*: But he hop'd they ſhould have the Benefit of the Law, till they thought fit to alter it; and then they would erect ſome Judicature where the People might have their Trial. The Argument went too far there-

therefore, or it argued nothing; for if there was any Thing in it, it tended to taking away the Proceedings of thoſe Courts totally. It was obſervable what uſe had been made of the laſt Precedent of the Lord *Macclesfield*, who proceeded in the Spiritual Court to an Excommunication: From whence they argued, that the Parliament might proceed Originally in this Caſe: When was the Time to make a Stand but in the firſt Caſe? then no Man could complain of an Injury. But if they granted the Duke this, they could not in Juſtice deny it to any other who ſhould ſtand in need of it.

Mr. *Dodd* obſerv'd, That the Gentlemen on the other Side had cited our Saviour's Words, *That no Man ſhould put away his Wife except for Fornication.* But they could not ſhew a Text where our Saviour ſays, the Man might marry again, tho' he might put away his Wife. And as to what had been ſaid, that where the Fact was notorious they might order Execution immediately; this was a ſtrange Doctrine to our *Engliſh* Conſtitution. Would they hang a Man firſt, and try him afterwards; let the Fact be never ſo notorious, it was the Right of all the People of *England* to have a legal Trial, and he hop'd they would not interpoſe till there had been a regular Trial in another Place. Page 602. Mr. *Dodd* replies.

Then Sir Thomas Powis *offer'd to read the Articles, but it was not permitted.*

Monday the 25th of *March*, 1700.

The Houſe having reſolv'd themſelves into a Committee of the whole Houſe, Sir *Rowland Gwynne* took the Chair, and the Council and Solicitors were call'd in. Then Mr. *Northey*, Council for the Duke, open'd the Evidence, which being the ſame as above, I ſhall only take Notice of his Remarks upon it.

He ſaid the Evidence would make out the Fact as plain as poſſible for a matter of that kind to be prov'd; but in the Nature of the Thing, there were Mr. *Northey* opens the Evidence.

were but a few Perſons to be entruſted with it, and thoſe were generally Servants who attended on the Dutcheſs's Perſon, and on Sir *John Germaine*. He hop'd it would be no Objection that they were Servants, for that were to ſay they ſhould prove the Fact, but ſhould have no Witneſſes, for theſe were Facts that could not be prov'd but by ſuch as were concern'd with the Dutcheſs: That the two principal Witneſſes were Foreigners and *Dutch* People, and it was reaſonable enough to expect Foreign Witneſſes, when an *Engliſh* Dutcheſs had a Foreign Gallant. They were ſuch as he thought fit to entruſt about her.

Page 603. That Mr. *Bayley* was a Servant of Sir *John Germain*'s and came into *Hoſier*'s Place when he was gone beyond Sea. He was an unwilling Witneſs becauſe he had been preferr'd by Sir *John Germain*; and yet when he was upon his Oath in the Houſe of Lords, he gave an Account that while he was in Sir *John Germain*'s Service, notwithſtanding that publick Reproach in 1695, and 1696, the Dutcheſs frequently came to Sir *John Germain*'s Houſe with one *Keemer*, whom ſhe had great Confidence in, and that when his Maſter lay from Home, he carried his Linnen to *Keemer* who was in the Dutcheſs's Service, or *Keemer* came to him for it; and after the Dutcheſs had been accus'd in the Houſe of Lords with ſuch a Familiarity, any Evidence of a Converſation between them afterwards was as much as a Thouſand Witneſſes; for no Woman that had valued her Reputation, having been accuſed as ſhe was, would have had any Converſation with Sir *John Germaine* afterwards.

Mr. *Atwood*'s Remarks on the Evidence. Mr. *Atwood*, Council for the Duke, obſerv'd farther, that the two Witneſſes *Hoſier* and *Vaneſſe* did depoſe that *Suſannah Barrington* was privy to this adulterous Converſation, and that ſhe was withdrawn ſince this Bill was depending in the Houſe of Lords: It was prov'd alſo, that Mr. *Daniel Germaine* and Mr. *Brian*'s Wife, who were privy to the ſame Converſation, were in *England* lately.

Then

Then the Witneſſes were called in, but their Depoſitions are not given, as in the Folio, becauſe it is ſaid to be the ſame with that already taken before the Lords, except that of *Anne Read*'s, which was new.

Anne Read depos'd, that in *April* 1692, ſoon after the Duke's Bill had been rejected in the Houſe of Lords, ſhe ſaw the Dutcheſs of *Norfolk* go in a Chair to Sir *John*'s Houſe; and that the Door being open'd, ſhe went into the Houſe with her Mask off: That within a Twelve Month laſt paſt, or thereabouts, ſhe followed him to the Dutcheſs's Houſe about three of the Clock in the Afternoon, and that ſhe did not ſee him come out. *Anne Read's* Evidence.

The Witneſſes being examined on the Behalf of the Duke of *Norfolk*, the Dutcheſs's Council were call'd upon to proceed in her Defence.

Sir *Thomas Powis* ſaid, he was at a Loſs, and under ſome kind of Surprize, to be call'd upon ſo ſuddenly to make their Defence. He hop'd ſince they were pleaſed to take that Caſe out of the uſual Way of Trials, and to try it in the firſt Inſtance, that they ſhould have time to make their Defence. That ſix Hours had already been ſpent in the Examination of the Witneſſes, and they had given ſuch a variety of Anſwers, that it afforded a great deal to be ſaid to it. That they had alſo a great many Witneſſes to examine. They had a Week's Time allow'd them in the Houſe of Lords, but they did not expect that here; that was no Rule. But while they were at the Bar, a Perſon had given them Intelligence on ſight of that Cook-Maid, that ſhe was turn'd away for being a common Thief in *Holland*, and therefore they ſaw how neceſſary it was that Time ſhould be allow'd, and they could not make their Defence then. Sir *T. Powis* moves for Time to make their Defence.

The Committee inſiſting however that they ſhould make their Defence immediately, Sir *Tho. Powis* obſerv'd, That the Evidence given before the Committee, was very different from that given before the Lords, and offer'd to produce the Examinations of Witneſſes before that Houſe: But they

The Council for the Dutcheſs not ſuffered to Read the Examinations in the H. of Lords.

they were not ſuffered to be read; but the Council were acquainted, That if they had any Witneſſes *Viva voca* to encounter their Evidence, they might produce them.

Whereupon Sir *Tho. Powis* ſaid, By this Reſolution they were depriv'd of that Defence which he thought they would have made for her Grace.

Mr. *Atwood* anſwer'd, That the Examinations in the Houſe of Lords were ſo lately, that it was an eaſy Thing for the Sollicitors who were by to give an Account of the Contrariety in the Evidence, if there were any.

A Member. Have you any other Evidence to offer as to this Point?

Whereupon they refuſe to enter upon Defence.

Sir *Thomas Powis.* All our Evidence tend to contradict theſe Witneſſes; and if the Reading theſe Depoſitions won't be allow'd, you will not put a bad Conſtruction of it. I do not proceed to make a Defence; for I cannot do it, unleſs I had ſome other Inſtructions from my Client, ſo we muſt ſubmit.

A Member. Whether they have any thing to offer in Defence of the Dutcheſs upon the Crime ſhe is charg'd with; for, I believe 'tis a new Thing for Council when their Client is charg'd with a Crime, to ſay, they cannot defend her, unleſs they go and aſk whether they ſhall defend her or No. If they have any thing to ſay in her Defence, we ſhall be ready to hear it.

Sir *Thomas Powis.* I would be glad to make the beſt Defence this Caſe may bear; I have defended it twice with good Succeſs, and this is a third time; and I muſt own to you, That the Courſe of our Evidence we did propoſe to ourſelves, is ſo far broke by the firſt Determination you were pleas'd to make, that I cannot venture upon the reſt of the Defence. If ſo be your Pleaſure, be not not to admit this Matter.

The Bill paſſes the Commons.

The Council being withdrawn, the Committee proceeded upon the Bill Clauſe by Clauſe, and went through it, and ordered the ſame to be reported. Whereupon the Bill was paſs'd.

PRO-

PROCEEDINGS between the KING, THOMAS KENDAL, *and* RICHARD ROE, *in the* KING'S-BENCH, *on an* Habeas-Corpus *upon a Commitment for* HIGH-TREASON, Mich. 7 Guil. 3. Octob. 31. 1695.

THE Priſoners being brought to the Bar on *Thurſday* the 31ſt of *October*, 1695, on an *Habeas Corpus* directed to the Keeper of *Newgate*, return'd the Cauſe of their Detainer to be a Warrant under the Hand and Seal of Sir *William Trumball*, one of his Majeſty's Privy Council, and Principal Secretary of State, as follows: *Theſe are in his Majeſty's Name, to authorize and require you to receive into your Cuſtody, the Bodies of* Thomas Kendall *and* Richard Roe, *herewith ſent you, they being charg'd with* High Treaſon, *in being Privy to, and aſſiſting the Eſcape of Sir* James Montgomery, *out of the Cuſtody of* William Sutton, *one of his Majeſty's Meſſengers in Ordinary, and charg'd with* High Treaſon. *You are to keep them in ſafe and cloſe Cuſtody until they ſhall be deliver'd by due Courſe of Law. And for ſo doing this ſhall be your Warrant. Given at the Court at* Whitehall *the 24th of* October, 1695.

Page 605. **The Priſoners committed by the Secretary of State.**

Sir

Sir *B. Shower's* Argument that a Secretary could not commit.

Sir *Bartholomew Shower* being Council for the Priſoner, took Exceptions to this Return; for that the Perſon Committing had no Authority for that Purpoſe: He ſaid his Clients thought themſelves hardly dealt withal, the Information againſt them being only for aſſiſting the Eſcape of the Centinels who were Privy to Sir *James Montgomery*'s Eſcape; but this being a Fact of which the Court would not take Notice, he confin'd himſelf to the Return, and inſiſted, that a Secretary of State, *quatenus* Secretary, could not Commit for Treaſon or Felony; he was not a Privy Counſellor, *quatenus* a Secretary, or a Juſtice of Peace; for tho' in Fact he might be in the Commiſſion, yet, unleſs he had taken the Oath of Office on a *Dedimus*, he could not Act as ſuch.

Privy Counſellor muſt take the Oath of Office beforehecan act as a Juſtice.

The Law took Notice of Conſtables, Sheriffs, Coroners, Eſcheators, and the like; but the Books which treat of the Juriſdiction of Courts, the Pleas of the Crown, or the Officers of Juſtice, made no mention of a Secretary of State; his Office rather related to Foreign Negotiations, than to Criminals, Priſoners, or Goalers. In all the Debates about the Liberty of the Subject, and wrongful Commitments in Parliament, in 4 *Car.* I. 1628; and among all the Precedents there mention'd, there were none by a Secretary, tho' there were ſeveral *per Mandatum Dom. Regis* by Warrant from the Lords of the Council: And it ſeems ſtrange, if ſuch a Power was lodg'd in this State Officer, there ſhould be no Precedent for it in thoſe Times, when Extrajudicial and general Warrants were ſo frequent, that they became a Grievance to the People, and ſuch a one as laid the Foundation of the Petition of Rights.

Page 606. A Secretary cannot adminiſter an Oath, *&c.*

A Secretary cannot Adminiſter an Oath; and the Law requires, that no Man ſhall be committed on an Extrajudicial Warrant, unleſs upon Oath: If there be but a Suſpicion, there ought to be Oath of the Cauſe of ſuch Suſpicion: For the Perſon Committing cannot Commit on another Suſpicion, unleſs there be Oath of ſome reaſonable Cauſe for it; neither can a Secretary take Bail of the Perſon

ſon accuſed, or a Recognizance to proſecute; and he might Challenge any Man to ſhew any one Recognizance ever return'd into any Court that was taken by a Secretary, either for the Appearance of a Criminal, or for the Proſecution of one.

Nor is a Secretary oblig'd by the Statutes that require Juſtices to return Informations and Examinations of the Perſons accus'd, and Witneſſes: Whereupon Mr. Secretary *Coventry* ſcrupled it, and by the Advice of Sir *William Jones*, took the Oath of a Juſtice of Peace; and of late, the Secretaries of State have thrown the Burthen on their Under Secretaries, who have been ſworn Juſtices of the Peace.

The Kind of Treaſon, or Felony, muſt be ſpecially expreſs'd in the Mittimus.

But admitting a Secretary can Commit in this Caſe, the Parties ought to be bail'd according to the *Habeas Corpus* Act; for that provides, they ſhall be forthwith bail'd, unleſs they be committed for Treaſon or Felony, *ſpecially mention'd and expreſs'd* in the Warrant; and if it be ſpecially expreſs'd, then upon Prayer, if not indicted, they are to be bail'd the laſt Day, *&c.* Here therefore the Parties ought to be bail'd, becauſe the Treaſon is not particularly expreſs'd; and ſo a Commitment for Felony generally would bring a Man within the Benefit of the Act to be bail'd.

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A Voluntary Eſcape of a Priſoner could be no Felony, unleſs the Priſoner was under lawful Cuſtody, by a lawful Warrant expreſſing the Offence; and the ſame Rules muſt hold in the Caſe of a Traytor's Eſcape, as to the Warrant of Commitment, and Lawfulneſs of Cuſtody, as doth in Caſe of Felony: Therefore if the Party commanded to receive, or the Perſon to whoſe Cuſtody he was committed, were no lawful Officer, then ſuch Cuſtody could not make the Reſcuer Guilty of any Capital Offence, *Co.* 2 *Inſt.* 550. And in this Caſe it did not appear what the Warrant was, upon which Sir *James* was in Cuſtody; nor was the Meſſenger in whoſe Cuſtody he was, a lawful Goaler; the Practice of making their Houſes Priſons, was but of late; their Law-Books took no Notice of him as a legal Officer; he was at moſt but

A Meſſenger's Houſe no lawful Priſon.

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but a Gentleman Porter, and that Method of Commitment to Meſſengers had been ſeverely cenſur'd. It was true, any Man might be commanded to carry another to Priſon, but he did not thereby become a Goaler, to detain him nine or eleven Months, as ſome Meſſengers had done. The Law that requir'd Commitments to the County Goals, was a ſufficient Evidence of the inſufficiency of a Meſſenger's Power to detain; and if he could not legally detain, the Conſequence muſt be, that the Eſcape or Reſcue was no Treaſon.

Commitments muſt be to the County Goal; or the Eſcape, or Reſcue, could not be Treaſon, or Felony.

But further, it was not ſaid with what Treaſon Sir *James* was charg'd, or how he was charg'd; it might be for ſuch a Treaſon wherein the receiving or helping to Eſcape was not Treaſon; and it might be for Treaſon generally, and then Sir *James* was bailable; conſequently the Reſcuer could not be excluded from Bail.

Nor could the Reſcuer be tried till the Priſoner was attainted, which was another Reaſon for their being bail'd; for here Sir *James* was dead, having never been attainted or indicted, which render'd it impoſſible for the Priſoners to be try'd for Treaſon; the Reſcuers could only be Fin'd and Impriſon'd in this Caſe.

Sir *Tho Trevor*, Att. Gen. for the legality of the Commitment.

Mr. Attorney General anſwer'd, that the Reſcuing a Felon, was Felony; and the Reſcuing a Traytor, was Treaſon; that a Meſſenger was a lawful Officer; however, any Man might impriſon a Traytor. That the Power of a Secretary to Commit had been ſettled, of which there had been many Precedents, and pray'd Time to look into them.

Sir *J. Hawles*, Sol. Gen. for the Commitment.

Mr. Sollicitor obſerv'd, that it had been admitted the Privy Council could Commit, and the Office of Secretary of State was antienter; that a Goaler *de facto* was within the Law; and the inſufficiency of Sir *James Montgomery*'s Commitment was not material: However, if the Commitment was good in Subſtance, it was enough; it need not be ſo certain and ſpecial as an Indictment, and therefore pray'd the Priſoners might be remanded.

L. C. J.

L. C. J. How were the Commitments at Common Law before Juſtices of Peace were inſtituted? My Lord *Coke* indeed ſaid, that none could be impriſon'd till Indictment, but that deſerv'd Conſideration; if they were to ſearch the Records in the *Tower*, they would find Commitments there by Secretaries of State. L. C. J. *Holt*;

Mr. *J. Rokeby.* I can ſee no Reaſon upon the Whole, why they ſhould not be bail'd; but ſince Mr. Attorney is not prepar'd, it is fit he ſhould have Time.

On *Wedneſday* the 6th of *November* the Priſoners were brought up again by Rule of Court, and Sir *B. Shower* mov'd again that they might be bail'd.

Mr. Attorney ſaid, he ſhould not have much oppoſed it, but that ſeveral Queſtions had been made at the Bar; as that a Secretary had not Power to Commit; that this Eſcape was no Treaſon; that a Meſſenger was not a legal Officer; and ſince theſe Things had been ſtarted, he muſt inſiſt upon it, that it was a good Return, and that the Priſoners ought to be remanded.

L. C. J. Then we muſt hear them again

Sir *B. Shower.* My Lord, I have peruſed the Reſolutions of the Judges in 34 *Eliz.* 1 *Anderſon* 297, 298. and muſt own that 'tis ſaid there, that one or more of the Lords of the Council may Commit; how far that is Law, muſt be examin'd: And I muſt beg your Lordſhip would take Notice of another Reſolution there, which condemns this Return, and deſtroys the Power of a Meſſenger; if this be Law, the Priſoners ought to be bail'd. It complains, that divers Perſons were, againſt Law, committed to Priſon in private Places; and not to any Common or Ordinary Priſons, or lawful Officers, as the Sheriff and other Perſons lawfully authoriz'd to keep a Goal; ſo that upon Complaint made, the Queen's Courts could not learn to whom to direct her Majeſty's Writs, and by this Means, Juſtice could not be done: And if theſe Reſolutions were allow'd to be of any Authority in one Part, they ought to be ſo in others. Sir *B. Shower's* further Argument againſt the Legality of the Commitment.

A Privy Counſellor can't commit becauſe he can't adminiſter an Oath.

But theſe were extrajudicial Opinions of the Judges, from which they might Vary afterwards (as they did in the Caſe of Ship-Money) and were not binding to them or their Succeſſors, as legal Reſolutions: And if they were Law, yet did they not relate to the Office of Secretary, but only to that of a Privy Counſellor; and they did inſiſt, that that Reſolution that one ſingle Privy Counſellor might Commit, was not Law; for he, no more than a Secretary, could Adminiſter an Oath, or take a Recognizance: And it was abſurd to ſay, that a ſingle Perſon ſhould be an Officer to Commit, and yet could not do what was Neceſſary in order to it.

That the King himſelf could not Arreſt a Man for Treaſon, or Felony; or Command one in his Preſence to be arreſted for either; he muſt Act by his Writs, or by ſome Order or Rule of the Courts of Juſtice: A Privy Counſellor was to adviſe the King, he was ſworn to it; to withſtand all Traitors, and diſcover all Conſpiracies, and ſo was every Subject by the Oath of Allegiance; but the Oath of a Privy Counſellor contain'd nothing relating to Commitments.

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By *Magna Charta* 19 *Hen.* 3. *Cap.* 29. which had been confirm'd by forty Acts of Parliament, it was enacted, that *Nullus liber homo impriſonetur niſi per legem terræ*; and this was made on Account of illegal Commitments. *Coke* ſays, that there was no Invaſion of this Law till *Edward* 3ds Time, and then the People quickly reſented it; for in 5 *Edward* 3. *cap.* 9. the great Charter is confirm'd; and by 25 *Edward* 3. *cap.* 9. it is further enlarg'd and declar'd, That from thenceforth, *None ſhall be taken by Petition or Suggeſtion made to the King, or to the Lords of the Council, unleſs it be by Indictment or Preſentment of good and lawful People of the Neighbourhood.* He would not ſay that theſe were Authorities againſt a Commitment by the Privy Council; but they ſeem'd ſtrong againſt an extrajudicial Commitment by a ſingle Lord of the Council.

Mr.

Page 612. Mr. Serjeant *Levinz* againſt the Legality of the Commitment to a Meſſenger.

Mr. Serjeant *Levinz* alſo, in behalf of the Priſoners, urg'd, that the Return was ill, becauſe the Commitment was to a Meſſenger; that it ought to have been to a County Goal; that the Cuſtody upon an Apprehenſion ought to be but twenty-four Hours. *Briſton* 19 Cuſtomer of *Normandy*, 456 *Hill.* 22. *Edw.* 4. *p.* 4.

That thoſe Meſſengers exacted Fees, *6s.* 8*d.* or ten Shillings *per Diem*; which was in Effect, to Fine the Party before he was convicted; and many other Arguments were repeated that had been inſiſted on the Day before.

The King's Council maintain the Legality of the Commitment.

The King's Council anſwer'd, that the Reſcuing one in Cuſtody upon Suſpicion of Treaſon, was Treaſon: And as to the Secretary's Commitment, it was not ſuch a Novelty as had been pretended; that it was very antient. The Caſe in 11 *Leon.* was flat to the Purpoſe; and in the *Tower* they found a Commitment in 1660, by Secretary *Morris*, and many more had been ſince; but Sir *Joſeph Williamſon*, who had the Papers, was in *Ireland*. It was not Neceſſary, that he who commits ſhould be able to give an Oath; the Houſe of Commons could not give an Oath, and yet could commit.

Sir *B. Shower's* Reply.

S. *B. Showers* reply'd, he was glad to find there were ſo few Precedents for a Secretary's Power; if there had been more, Mr. Attorney would have produc'd them. That the Houſe of Commons's Power was an Inſtance not fit for him to Anſwer: And as they admitted that a Secretary could not give an Oath, he thought the Conſequence was plain that he could not commit.

Opinon of the L. C. J. on it.

L. C. J. I did always give Credit to the Reſolutions of the Judges in *Anderſon*; and it is part of a Privy Counſellor's Oath to take Care of the King's Perſon againſt Traytors. Was there not a Goal Delivery at Common Law; and conſequently does not the Law ſuppoſe that ſome are committed thither before the Goal Delivery? And then,

A Felon may be committed to any Perſon on an Apprehenſion.

by whom were theſe committed antiently? * Tho' a Meſſenger be not a proper Officer, any Perſon may be order'd to receive for a convenient Time for Examination, *&c.* Commitments regularly ought to be to the County Goals: But Mr. Attorney, the Queſtion is, Whether you ought not to have ſpecify'd in your Warrants, for what Treaſon Sir *James* was committed; for the Eſcape will be the ſame Species of Treaſon with that for which the Party reſcu'd was committed: I think therefore we muſt Bail them.

The Court of Opinion a Secretary might commit, &c.

J. Rokeby. A Commitment by a Secretary of State, was long before Sir *Lionel Jenkins*'s Time. *Walſingham* committed near two hundred Years ago. And there is another Precedent in 2 *Leon.* 175, *Hillyard*'s Caſe. I think a Conſervator of the Peace at Common Law may commit, and ſo may a Conſtable. It is incident to his Power of Committing, that he may give an Oath, and take a Recognizance; and (*Quod Mirum*) one of the Council may commit. I would not have the Students go away with the Novelty of it: And for Meſſengers, for any Thing appears, he might be only carrying him to Goal. However, I think they ought to be bail'd, becauſe it is not expreſs'd in the Warrant, what the Species of Treaſon was for which Sir *James* was committed.

Or a Privy Counſellor.

The Priſoners baild becauſe the Kind of Treaſon was not ſpecified.

Mr. J. *Eyre.* There may be a Difference between carrying to Priſon, and a Commitment with a Charge upon them; and there may be a Difference between ſpecifying, and not ſpecifying the Treaſon. Upon the Whole, I think they ought to be bail'd.

The Priſoners were bail'd to appear the laſt Day of the Term, to Anſwer ſuch Matters as ſhould then be objected againſt them.

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* Juſtices of Peace are not by Common Law, but appointed by Statutes; the firſt of which was 1 *Ed.* 3. *Cap.* 16. By Common Law there were only Conſervators of the Peace, whoſe Power was very ſhort of that of a modern Juſtice. See *Crompton*'s and *Dalton*'s *Juſtice.*

The

The TRIAL *of* PATRICK HURLY, *of* Moughna, *in the County of* Clare, *Gent. at the* King's-Bench *in* Ireland, *on two Indictments; the one for Perjury, and the other for conſpiring with* Daniel Hicky, *&c. to cheat the Popiſh Inhabitants of the County of* Clare, May 31. 1701. Paſch. 13 Will. 3.

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Indictment for Perjury, for ſwearing a ſham Robbery.

THE ſaid *Patrick Hurly* was indicted for Perjury, in having ſworn before *Neptune Blood*, Dean of *Killſenora*, one of his Majeſty's Juſtices of Peace for the County of *Clare*, that he was robb'd of 300 Piſtoles in Gold, and ſeveral other Things, by four Perſons unknown to him; but whom, by the Tone of their Voice, he believ'd to be *Iriſhmen* and *Papiſts*: Whereas in Truth, he well knew them by their Names and Perſons, being ſet on by himſelf, and did not take any Thing from him.

A 2d Indictment for a Cheat, in conſpiring to cheat the County of a Sum of Money.

The ſaid *Patrick Hurly* was alſo indicted a ſecond Time; for that he did falſely and deceitfully conſpire, with one *Daniel Hicky*, and ſeveral other Malefactors, unjuſtly to oppreſs the *Popiſh* Inhabitants of the County of *Clare*, and cheat them of a great Sum of Money, by colour of the *Raparee Act*.

Dean Neptune Blood, *who took* Hurly's *Examination, ſworn.*

The Juſtice of Peace gives Evidence of his Examination before him.

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He depos'd, that the Examination produc'd in Court, was taken by him on the 6th of *March*, 1699; the Priſoner, *Patrick Hurly* came before him, and made Oath of the Facts therein contain'd, *(Viz.)* That on *Sunday* the 3d of *March*, 1699, about eleven a-Clock at Night, being at his Father's Houſe at *Moughna* in the ſaid County of *Clare*, ſeveral Perſons with their Faces maſk'd, forc'd into the Deponent's Chamber, made a ſhot at

him, and tied him and one Mr. *Ronaine*, his Friend, with Cords faſt to the Bed-ſtead: That by the Tone of their Voice, they ſeem'd to be *Iriſhmen* and *Papiſts*: That he knew not one of them, either by their Names or Perſons: That they broke open ſeveral Trunks, and took out of one of them a Bag wherein were 374 Guineas, and 345 Piſtoles, a Gold Croſs, ſet with Diamonds, and ſeveral other Things of Value, a great Number of *Holland* Sheets, and *Holland* Shirts, in all to the Value of about 1300 l.

This he ſwore according to a late Act there, call'd, the *Raparee Act*, that he might oblige the Country to reimburſe him the 1300 l. tho' it was a mock Robbery by Perſons he had employ'd, and very well knew, and who took Nothing at all from him, but what they return'd him again, deſigning to Cheat the County.

Calaghan Carty, *ſworn.*

Page 615. Mr. *Bernard*, Council for the Priſoner, objected, that this Witneſs, and ſome others, who were brought againſt him, were actually ſent to Goal for this Robbery, and threatned to be hang'd, unleſs they would ſwear it was a ſham Robbery, and therefore their Teſtimony ought not to be allow'd; but this Objection was over-rul'd.

Calaghan Carty's Evidence for the King. *Calaghan Carty* depos'd, that he was Servant to Mr. *Patrick Hurly*, the Priſoner; that his Maſter call'd him into the Stable, and ſhew'd him a Purſe of Gold, and told him, he was to pay it to one Mr. *Arthur* on ſuch a Day, and if he did, he ſhould be ruined; but if he could make Mr. *Arthur* believe he was robb'd, he would compound with him. That he deſir'd the Deponent therefore to join with ſome others, to commit a feign'd Robbery in his Father's Houſe, and ſhew'd him the Trunks where he would put his Money and Linnen: That the Priſoner provided them with Blue and Red Coats, Vizards, Swords, and Fire Arms; but the Fire Arms were loaded only with Powder.

Page 616. That it was about ten a Clock on *Sunday* Evening, being

being the 10th of *March*, 1699, before People went to Bed, that they put this Project in Execution. That they entered the House just as Mr. *Ronaine*, a Friend of their Master's came out, and seiz'd some of their Arms, but without any Intention to do Mischief. That they bound their Master and Mr. *Ronaine* to the Bed posts, and poured the Money, or Counters, for he could not tell what they were, out of the Purse before Mr. *Ronaine*, as they were directed, and then carried off the Linnen and Money; but that they were afterwards return'd to Mr. *Hurly* again.

Margaret Coneen, *sworn.*

Page 617. *Margaret Coneen* the Maid Servant's Evidence against the Prisoner.

She depos'd, that she was Servant in Mr. *Hurly*'s House, which stands alone, a Year and half: That about ten a-Clock one *Sunday* Night, there came in four or five Men in Disguise, arm'd with Swords, Pistols, *&c.* That she was then in the Kitchen; and soon after, she heard *Mac Cay*, the Footman, cry out, his Master was murder'd. That several shots were made at her, but no hurt done, nor she could see no Marks of shot upon the Walls afterwards. That the Arms they had were the very same that Mr. *Hurly* had in his House, and lay upon the Table that Evening the pretended Robbery was committed. That she was of Opinion first, that it was a real Robbery, but was otherwise inform'd afterwards by *Calaghan Carty*; and she was confirm'd in its being a sham by a Table Cloth, and some other Linnen being sent home, which her Master pretended he had been robb'd of.

Walter Neylan, *sworn.*

Page 620. *Walter Neylan's* Evidence.

He depos'd, that he was in Prison at *Ennis*, for *Hurly*'s Debt, for which he was bound to one *Thomas Arthur*; and that while he was there, *Hurly* and some of his Servanss were brought Prisoners thither, on Suspicion of their having feign'd this Robbery to cheat the Country. That after

Daniel Carty had diſcover'd the Fraud, *Donogh O'Brian Andrews*, another of Mr. *Hurly*'s Dependants, who was likewiſe a Priſoner there, apply'd himſelf to the Deponent, and deſir'd him to enquire of Mr. *Hurly* what Method he would take to get him diſcharg'd; and upon acquainting him with it, Mr. *Hurly* anſwer'd, he ſhould be undone if the ſaid *O'Brien Andrews* confeſs'd it, and gave the Deponent a piece of Money to give to *O'Brien Andrews*. That *O'Brien* ſaid, that would not do, he muſt tell the Truth. And *Hurly* told the Deponent thereupon, that he would give him any Gratification in the World, if he would prevent *Donogh O'Brien*'s coming in againſt him.

To this the Priſoner, Mr. *Hurly*, reply'd, that *Neylan*, the laſt Witneſs, was exaſperated againſt him, on Account of his having been ſent to Priſon for his Debt: That he had tamper'd with the Witneſſes, and was become his inveterate Enemy. That he not only ſwore againſt him maliciouſly and falſely himſelf, but had incited others to ſwear againſt him.

Captain Charles Macdonough *ſworn.*

Capt. *Macdonough*'s Evidence.

Page 621.

He depos'd, that he was Mr. *Hurly*'s Sollicitor, and intimately acquainted with him. That being at his Houſe juſt before the pretended Robbery, and underſtanding that Mr. *Hurly* had brought no Money home with him from *Dublin*, he told him he was a ſtrange Man to come without Money, the Country would be too hot for him. That the preſent Sheriff was a Friend to his Adverſary Mr. *Arthur*. And that *Hurly* did then fortify his Houſe, and was in no Condition to pay his Debts. That *Hurly* ſaid, that his Friends, Sir *Toby Butler* and Colonel *Macnamarra*, had a great Influence on the Sheriff, and he hop'd they would prevail on him to do him no harm; which confirm'd him in the Opinion that he had no Money. He depos'd further, that Mr. *Hurly* having brought the *Raparee Act* from *London*, was reading it over, and ſaid it was a very pretty way

way for Perſons to recover Money of the County. That after the Deponent had left Mr. *Hurly*, Captain *Obrien* wrote him word the Priſoner was robb'd, and deſir'd the Deponent to come and ſollicit at the Aſſizes at *Ennis* on his Behalf; but he was ſo far from believing he was robb'd, that he refus'd to be concern'd for him, and wrote Mr. *Hurly* a drolling Letter on the Occaſion. That about *February* laſt, the Wife of *Daniel Hickey*, a Dependant on the Priſoner, who was ſuſpected to be in the Robbery, came to the Deponent, and ſaid her Husband was like to be undone by paſſing away falſe Counters; that if he could get his Liberty, he would go to *Dublin*, and ſwear the Robbery was a Cheat, and that they had ſome of the Counters which were pretended to be Gold in their keeping. That the Deponent acquainted Mr. *Butler*, a Juſtice of Peace of the County of *Clare*, with this, and the Woman was taken up and indicted for paſſing away of Counters for Money.

Walter Huonin, *the High Conſtable*, *ſworn.*

He depos'd, that he had a Warrant to ſearch for Goods, pretended to be ſtolen from *Patrick Hurley*, and that in a Dunghill at *Daniel Hickey*'s Houſe in *Moughna*, about a Quarter of a Mile from Mr. *Hurley*'s, he found a Purſe with an hundred and twenty-one yellow Counters in it, which he produc'd in Court.

Page 623. *Huonin*'s Evidence.

Mortagh Mac Colloghy *ſworn.*

He depos'd, that *Hickey*'s Wife bought a Cow of him, and ſhe wou'd have paid him for her with two yellow Pieces of Coin like Guineas: he told her they were not Guineas, and believ'd they were ſome of *Patrick Hurley*'s Gold: That he gave her three Pence Half-penny and a Quartern of Tobacco for them, and ſhe took it, and wiſh'd the reſt were as well ſold: and the two Pieces were

Page 624. *Mortagh Mac Colloghy*'s Evidence.

were produc'd in Court, and compar'd with the reſt of the Counters.

Joſeph Lynch *ſworn.*

Joſeph Lynch's Evidence. Page 625.

He depos'd, that he was intimately acquainted with the Priſoner, Mr. *Hurly*, and drinking with him at one Mr. *Bargery*'s Houſe, he ſaw him take a Bag out of his Portmanteau that held about a Quart, which he took to be Money; but looking into the Bag, he found them to be all Counters, and aſking what he did with them, *Hurly* ſaid he intended to make uſe of them for his Diverſion. That *Hurly* afterwards diſcours'd him about feigning a Robbery, ſaid it was a pretty way of getting Money, and wou'd have had the Deponent concern'd with him in ſuch a Contrivance, but he refus'd. He ſaid further, that the Priſoner ſent a Trunk of Linnen to his Houſe, after the Robbery was committed, which was taken away from thence the Night after Mr. *Hurly* was carried to Jayl.

Charles Caſſidy, *Surgeon, ſworn.*

Caſſidy's Evidence. Page 627.

He depos'd, that the Priſoner's Father, Mr. *Hurly*, being ſick, he was ſent for to look after him. That the Priſoner propos'd his being concern'd in the pretended Robbery, and offer'd him forty Guineas, and upon his objecting he was too well known, ſaid he would get him a Vizard-Maſk. That the Deponent agreed to bear a part in it, but coming home his Heart fail'd him, and he had no Hand in it.

Daniel Kiefe *ſworn.*

He depos'd, that the Priſoner enquir'd at one *Bently*'s Houſe for Maſks and Vizards, and being told he might have them in *Chriſt-Church-Yard*, he went thither for them.

Several

Several other Witneſſes were produc'd, to prove that the Priſoner *Hurly* was in great want of Money, and that it was not at all probable he was robb'd of the Money he pretended he was.

Mr. *Bernard*, Council for the Priſoner, then enter'd on his Defence, and made his Obſervations on the Evidence that had been given for the King. He ſaid, Mr. *Hurly* came with a good Fund of Money into *Ireland*, and left large Sums behind him in *France*. That Sir *Donagh O Brien* had a Quarrel with Mr. *Hurly*, and had influenc'd the Grand Jury not to find the Bill of Indictment againſt the Robbers, notwithſtanding the Robbery was fully ſworn. That the four Men who had been taken up for the Robbery, were promis'd their Lives if they wou'd confeſs it to be a ſham Robbery. That they were laid in heavy Irons, and threaten'd to be hang'd if they wou'd not declare the Robbery to be a Cheat: And in theſe Circumſtances Confeſſions had been extorted from them.

Page 628. The Priſoner's Council's Obſervations on the Evidence.

Mr. John Hurly, *Brother to the Priſoner, call'd on his Behalf.*

He depos'd, that he receiv'd ſeveral Sums of Money of his Brother's, from *Holland* and elſewhere, *viz.* four hundred and ninety Pound by Colonel *Lovet*, two hundred Pound by *Jeremiah Donavon*, and in the Year 1697, from Mr. *Symons* three hundred Pound ten Shillings, and two hundred Pound more in *Limerick*. That he paid moſt of this Caſh to his Brother *Hurly*, the Priſoner, ſome was paid to Mr. *Arthur*, and more to Mr. *Burton* and others. He depos'd further, that he ſaw a Note that was given to *Daniel Hickey* by Mr. *Hickman*, a Juſtice of Peace, and *Cuſack*, the then Sheriff, whereby they promis'd, that if he wou'd make a true Diſcovery concerning *Hurly*'s

John Hurly's Evidence for the Priſoner.

Page 629.

Hurly's Robbery, they would interceed to the Government for a Pardon for him.

Dorothy Kemp *ſworn.*

Page 630. *Dorothy Kemp*'s Evidence.

She depos'd, that ſhe liv'd at *Moughna*, about a quarter of a Mile from Mr. *Hurly*'s Houſe. That ſhe happen'd to be there that Night the Robbery was committed, and Counſellor *Ronaine* alſo was there, having waited three Days to pay Mr. *Arthur* ſome Money. That Mrs. *Hurly* went from home the *Saturday* before the Robbery, and took ſome Gold out of a Cheſt, and ſhew'd the Deponent ſome of it. That the Deponent went to the Cheſt for ſome Table Linnen, and laid her Hand upon the Bag where the Gold was: That Mr. *Hurly* came into the Room at the ſame time, and aſk'd her what ſhe did there, and took the Bag and put it in his Cloſet. That the Night the Robbery was committed, Mr. *Ronaine* was going out of the Door, when the Robbers ruſh'd in with Swords and Piſtols, and that Mr. *Hurly*'s Man cried out his Maſter was murder'd. She was then in the Chamber turning down the Bed, and five of them came up, and two more ſtaid in the Parlour. That the Robbers tied Mr. *Hurly* and Mr. *Ronaine* with Cords, and forc'd her into the Room where Mr. *Hurly*'s Father lay bedridden. And ſhe depos'd further, that ſhe was offer'd ten Pounds by *Murrough Obrien*, to hide Counters in her Maſter's Houſe, or *Hickey*'s. That Mr. *Hurly* had thirty Pair of Holland Sheets, and they were all taken away but five Pair by the Rogues.

Page 631. *Murrough Obrien* confronted with the laſt Witneſs.

Then the King's Council call'd *Murrough O'Brien* to confront the laſt Witneſs. *Murrough O'Brien* depoſed, That he was ſo far from making any Offers to *Dorothy Kemp*, the laſt Witneſs, that he did not think it ſafe converſing with her; ſhe was a Lewd Woman and had two Children by the Priſoner Mr. *Hurly*, and that the Deponent had no Communication with her. That as

to

to *Hickey* indeed his Wife told the Deponent ſhe would diſcover all if he would bring her Husband home again, and he wrote a Letter to *Hickey*'s Wife to come to him about that Affair.

Daniel Mac Cay, Servant to *Hurley*, call'd.

Daniel Mac-Cay's Evidence

He depos'd, that he had ſerv'd Mr. *Hurly* the Priſoner a conſiderable Time: That he was in the Houſe when the Robbery was committed. He ſaw five of the Robbers; that they put the Family in great Terror, and fell upon his Maſter. Page 632. He thought at firſt they were Bailiffs come to arreſt his Maſter; but coming into the Room where they had tied him, he found they were Thieves. That there were ſeveral Shots made, but he could not ſay any Body was hurt, or that there were any Bullets to be found, or any Marks they had made in the Walls. And depoſed farther, that one *Chriſtopher O' Brien* did tamper with him to take off his Evidence, and would have him ſwear that his Maſter's Gold was Counters, but he was ſure it was Gold. He depos'd alſo, that his Maſter ſhew'd him a great Sum of Money at *Dublin*, conſiſting chiefly of Piſtoles, and told him he deſign'd to carry it into the Country and pay off Mr. *Arthur*. And being ask'd what Road they went down, he nam'd ſeveral Places that were a great deal out of the way, which rendred his Evidence ſuſpected.

Chriſtopher O'Brien call'd. Page 634.

He depos'd, That he never made *Mac Cay* any Promiſe or Offer in his Life.

John Crips ſworn,

John Crip's Evidence.

He depos'd, That he was beaten and threaten'd by one *Halloway*, becauſe he would not ſwear againſt Mr. *Hurly* the Priſoner; and that Mr. *Nayland* and Mr. *Lynch* offer'd him great Advantages if he would give Evidence againſt the Priſoner; but

but they all denied upon their Oaths that they had any ſuch Converſation with him.

Page 636. *Daniel Hickey* call'd.

Dan. Hickey's Evidence. He depos'd, That he was carried to Goal and laid in Irons. That he was told that *Daniel Carty* had confeſs'd the whole Matter; and being brought before a Juſtice of Peace, the Deponent was forced to ſwear the Robbery a Sham by Mr. *Hickman* and Mr. *Cuſack*, who told him he ſhould be hang'd if he did not, and it was only through Fear he was compell'd to give in that Information, wherein he had depos'd that the Robbery was contriv'd by Mr. *Hurly*, and that the Deponent had been an Actor in it. But it appearing that this Witneſs had ſworn Examinations on both Sides that were inconſiſtent, and frequently contradicted himſelf, his Evidence was ſlighted by the Court and Jury.

Donogh O'Brien Andrews, Junior, call'd.

Donogh Obrien's Evidence. He depos'd alſo, That he was manacled and fetter'd in Goal, and forc'd to ſign an Examination, wherein he made Oath before a Juſtice of Peace, that it was a Sham Robbery, which he now denied in Court. But his Father being produced as an Evidence againſt him, the Evidence of the Son was not much regarded.

Page 637.

Page 640. *et ſeq.* The King's Council made no other Obſervations on the Evidence, but that the Priſoners Witneſſes were all of them poor profligate People, that had acknowledged themſelves forſworn on one Occaſion or other. And that the Witneſſes for the King were moſt of them Men of Credit and Reputation, and had prov'd the Priſoner perjur'd beyond all Queſtion.

The Judges Directions to the Jury. Mr. Juſtice *Coote* the Judge, having ſumm'd up the Evidence, did in his Directions to the Jury ſuggeſt, that there was little Credit to be given to *Hurly*'s Witneſſes, and that the Purjury was fully prov'd.

The

The Jury being withdrawn, return'd about half an Hour afterwards, and brought in the Priſoner guilty on both Indictments. The Attorney praying the Judgment of the Court thereupon, Mr. *Hurly* was ſentenced to pay an Hundred Pounds Fine on the firſt Indictment, and to be impriſon'd till it was paid. The King's Council inſiſting that the Pillory was the Puniſhment for a Cheat, when they mov'd for Judgment on the laſt Indictment. The Court anſwer'd, if he was not able to pay the Fine, he ought to ſuffer Corporal Puniſhment, but the Judgment on the laſt Indictment was reſpited.

Priſoner found guilty on both Indictments.

Page 646.

His Sentence.

The Lord Haverſham's Speech *in the Houſe of* Lords, *on the firſt* Article *of the* Impeachment *of Dr.* Henry Sacheverell. *

My Lords,

Page 647.

WHEN I conſider where this Impeachment began, I cannot think but the Deſign of it was very good, but whatever it was, in its firſt Intendment, it is very evident, it has already produc'd very miſchievous Effects; it has created great Diſturbances in private Families, and Tumults amongſt the People; and raiſed a Ferment in the Nation, that will not be laid by your Lordſhips Judgment. It has been a two edged Miſchief; giving the Church on the one ſide, and the Diſſenter on the other, too juſt Aprehenſions that they are both in Danger. Nor can this be wondered at, when your Lordſhips have been told, by ſome of the Managers, of a *pretended* Divine Right of the Church; and when it has been more than hinted by the Managers of the Houſe of Commons,

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* As the Editors of the Folio Edition have thought fit to print theſe Speeches in their Work, we here inſert them, tho' the Argument was wore Thread-bare at the Trial.

That

That the Clergy ought to be directed by the Civil Power, what Doctrine they ſhould teach: Nay, when they have authoritatively taken upon them to interpret Scripture, and charg'd it as a Crime upon a Miniſter, that he had wreſted ſeveral Places of it to his own wicked Intentions.

My Lords, After ſo noble a Defence made for the Doctor by his Counſel, and ſo great and moving an Apology by himſelf, I ſhould not trouble your Lordſhips upon this Occaſion, were it not more in Juſtification of my ſelf, for the Judgment I ſhall give, than for the Sake of the Doctor, whoſe Cauſe, I think, now ſtands in very little need of it.

I was, *My Lords*, a Sufferer in the late Reigns, as well as others; I was in the Convention-Parliament, and in the Vote of Abdication; and am, at this Day, of the ſame Principle I was then; and yet, notwithſtanding this, I am not aſhamed to ſay to your Lordſhips, that I think my ſelf obliged, in Juſtice, to acquit the Doctor from the Charge brought againſt him in this Article. And tho' this may ſeem ſtrange to ſome of your Lordſhips, yet, I hope, it will not appear ſo very ſtrange as to ſee Biſhops vote againſt their own Doctrines, and Diſſenters in the midſt of a Mob, that are pulling down Meeting-Houſes.

I ſhall not trouble your Lordſhips about the Original of Government, or the divers Forms of it; your Lordſhips heard that learnedly diſcourſed on by one of the Managers of the Houſe of Commons below: But there is one thing, *My Lords*, that if my Memory ſerves me right, that Gentleman omitted, and it is a Matter too that I take to be of the greateſt Conſequence to any Government whatſoever: I mean, the Divine Appointment, or Inſtitution of Government itſelf; from which Appointment it is, that Men are obliged to Obedience to the Magiſtrate, which is the greateſt Security the Magiſtrate has. And I the rather mention this, becauſe of Notions that ſome People have of late advanced of their own, of a diſcretionary Obedience only; that is, in my Opinion, whilſt

whilſt the Government is for them, they will be for it; and think themſelves bound to obey no longer. It is not neceſſary, to the Proof of this Divine Authority, to fix the juſt Time and Place. It is enough, that we have it as expreſly, as plainly, and as clearly declared, as can be put into Words, that it is ſo.

There is another thing, *My Lords*, that in general, I would mention to your Lordſhips, before I come to the Article itſelf, which may otherwiſe be the Occaſion of ſome Miſtake in this Debate; we are not now judging according to our own Notions of Politicks, or determining how far Reſiſtance or Non-Reſiſtance is lawful. It would be a ſtrange Rule of Judgment, to find any Man guilty for the Sake of one's own private Opinion, and for the eſtabliſhing a Doctrine which he likes, and his Neighbour does not. But the only Queſtion before your Lordſhips is, whether, and how far, the Houſe of Commons have made good their Charge againſt the Doctor. And, I take Liberty to ſay plainly to your Lordſhips, that, in my Opinion, they have been very far from making good their Charge againſt him in this Article.

My Lords, to prevent the leaſt Miſtake, I ſhall read the Words of the Article to your Lordſhips, as they ſtand in the Impeachment.

" He, the ſaid *Henry Sacheverell*, in his ſaid " Sermon preach'd at St. *Paul*'s, doth ſuggeſt " and maintain, That the neceſſary Means us'd to " bring about the ſaid happy Revolution, were " odious and unjuſtifiable: That his late Majeſty, " in his Declaration, diſclaim'd the leaſt Imputa- " tion of Reſiſtance, and that to impute Reſiſtance " to the ſaid Revolution, is to caſt black and " odious Colours upon his late Majeſty and the " ſaid Revolution."

The Doctor in this Article is charg'd with having maintain'd, *That the neceſſary Means us'd to bring about the late happy Revolution, were odious and unjuſtifiable.* To ſupport this, the Commons ſay, That having aſſerted the general Propoſition of the Unlawfulneſs of Reſiſting the

Supreme Power, and not having excepted the particular Caſe of Reſiſtance that was made uſe of as a Means to bring about the late happy Revolution; he does thereby reflect both upon the Means, and upon the ſaid Revolution. In Anſwer to this, there have been two things inſiſted upon to your Lordſhips, in behalf of the Doctor, by his Counſel: Firſt, That in Caſes of ſuch a Nature as this, the Exception is always imply'd in the general Rule; and there was a very unanſwerable Inſtance brought in Proof of this, at leaſt to moſt of your Lordſhips; it was the Oath of Allegiance to King *James*. All thoſe that took that Oath, took it in general Words, and yet ſuch an extraordinary Caſe as the Revolution was excepted, tho' not expreſs'd by thoſe that took
Page 648. that Oath. The next was, the Doctor, ſay they, would have been juſtly more blam'd, had he mention'd all the Caſes of Exception, which extraordinary Caſes ought to anſwer for themſelves, whenever they fall out.

And tho', *My Lords*, theſe two be a full Anſwer, yet there are two things more, I think with Submiſſion, may be added to it, which have not as yet been taken Notice of.

The firſt is, *My Lords*, That the Proof againſt the Doctor is drawn by Conſequences of the Commons own making, which he himſelf diſowns; and I appeal to that Reverend and Learned Bench, who are great Maſters of Controverſy, whether it is not an eſtabliſh'd Rule amongſt all learned Men that have the leaſt Spark of Ingenuity, That no Man ought to be charg'd with Conſequences, let them appear to his Adverſary never ſo clearly and undeniably to follow from his Aſſertion, when he himſelf denies thoſe Conſequences. This is ſo known a Maxim, in all Diſputes between Proteſtants and Papiſts, and between Proteſtants themſelves, that it cannot be deny'd. Now, the Doctor himſelf denying, as he does, that he had the leaſt Thought of including the Revolution under his general Aſſertion, or that he apply'd his Doctrine of Non-Reſiſtance to

that

that Caſe, cannot, without the higheſt Injuſtice, be charg'd with Conſequences which he himſelf utterly denies.

In the next place, it is impoſſible, in my Opinion, to prove that Reſiſtance was made uſe of as a Means to bring about the late happy Revolution; and, conſequently, is not within the Doctor's general Maxim.

Means, *My Lords*, is a relative Term, and refers to ſome End; and the End and Deſign of the Prince of *Orange* in his coming hither, and of thoſe that join'd him when he was here, being to have the Nation and Rightful Succeſſion ſecur'd by a Free Parliament, it follows, that whatever Force was at that Time made uſe of, could not be made uſe of as a Means to bring about an End which was never intended.

Far be it from me, *My Lords*, to leſſen the great Undertaking to deliver us from Popery and Arbitrary Power; and tho' the Glory of that Enterprize is wholly attributed to King *William*, 'tis certain, her preſent Majeſty had her Share in it, however that is forgotten: For, give me leave to ſay, that had not her Majeſty countenanc'd the Undertaking of the Prince of *Orange* with her Aſſiſtance, in my Opinion, the Succeſs had been very dubious.

Now, is it poſſible, *My Lords*, to imagine, that it was ever the Deſign of her Majeſty, or thoſe that join'd the Prince of *Orange*, to take the Crown off of King *James*'s, and put it upon King *William*'s Head?

No, *My Lords*, the avowed great Deſign was quite otherwiſe, as appears by the Declaration itſelf, which was read below: It was to reſtore and ſecure our Laws from the Invaſions that had been made upon them by Arbitrary Power: It was to ſecure that Right which all the World knows the Princeſs had to the Succeſſion of the Crown, and to have every thing ſettled by a Free Parliament, and not to make a Revolution by dethroning King *James*. This the Prince himſelf owns, when he ſays in his Declaration, *he had no*

other Deſign in coming hither, but a Free Parliament.

My Lords, I take it to be of moſt dangerous Conſequence, to judge any Man by Suggeſtions and Innuendos: Let what will be ſaid to juſtify it, it ſhall never be the Rule of my Judgment.

Groundleſs Suggeſtions, *My Lords*, have, within my Memory, been the Pretence of Power, to cover illegal Oppreſſion with the Shew of Reaſon, to the Publick. I will give your Lordſhips but one Inſtance of it: It was the Caſe of a Reverend Prelate, now in the Houſe; I mean the Archbiſhop of *York*; his Grace was then Dr. *Sharpe* only. It was in the Year Eighty Six; there was an Order, directed by way of Letter to the Proteſtant Biſhops, to diſcharge all the inferior Clergy from preaching upon controverted Points in Divinity. They thought it ſerved the Deſigns of Popery, then, to direct Miniſters how they ſhould preach; which was, in effect, to forbid them to defend their Religion. This Precedent was taken from an Order in Queen *Mary*'s Time, ſays the printed Account; when at the ſame time, it was attack'd by the *Romiſh* Prieſts with all the Vigour they were capable of, whilſt the Popiſh Sermons and Diſcourſes were printed by Authority. Notwithſtanding this Order, the Doctor took occaſion, in ſome of his Sermons, to vindicate the Church of England, in Oppoſition to the Frauds and Corruptions of Popery. But this, by the Court Emiſſaries, was interpreted much the ſame Way as the Doctor's Sermon is now, to be endeavouring to beget in the Minds of his Hearers, an ill Opinion of the King and his Government, by inſinuating Fears and Jealouſies, to diſpoſe them to Diſcontent, and to lead them into Schiſm, Diſobedience and Rebellion.

My Lords, When the Homilies and Articles, when ſo many Archbiſhops and Biſhops, and the Univerſity, and moſt of the Foreign Divines too, eſpecially the *Lutherans*, have aſſerted the ſame Doctrine of Non-Reſiſtance to the Supreme Power,

as

as Dr. *Sacheverell* has; I think it the hardeſt Caſe in the World, that this unfortunate Gentleman ſhould thus be ſingled out and made a Criminal, and a kind of Martyr, enduring the Trial of cruel Mockings, yea, moreover, of Bonds and Impriſonment, for aſſerting the ſame Doctrine. 'Tis true, *Beza* and *Pareus*, and ſome others of the *Calviniſts*, are of another Opinion; but 'tis known, that *Pareus*'s Commentary on the 13th of the *Romans* was burnt at *Oxford*, by the Order of King *James* I. for aſſerting that Doctrine.

But there is one thing, *My Lords*, ſo aſtoniſhing in this Proſecution, that I cannot but take Notice of it: Thoſe who were at Man's Eſtate, at the Revolution, know how induſtrious, on the one ſide, all that were Friends to King *James* were, to put his leaving the Nation then upon the Foot of Force and Reſiſtance, as thinking this the ſtrongeſt and beſt Argument to juſtify his Withdrawing himſelf from his People. They rack'd their Brains to find out Arguments to convince Men, that his Life was manifeſtly in Danger, by ſtaying here; and that it was for the ſake of that, and his Liberty, that he was forc'd to withdraw; and that his Withdrawing was juſt, being an Act of Neceſſity, and not of Choice.

On the other ſide, thoſe that were Friends to the Revolution, made it their Buſineſs to perſuade the World, that all this was but a Colour and Pretence, and that the Fact was quite otherwiſe; that the Senſe and Conviction King *James* had of what he had done, prevail'd upon him rather to throw off the Government, than concur with a Free Parliament. Page 649.

That this was the only Foot they then put it upon; and that it was not then put upon the Foot of forfeiting the Government by Male-Adminiſtration; if any Man denies, I appeal to the Papers that were then writ, and are now in Print, on this Subject.

This being ſo, it is very ſtrange to ſee ſo great an Alteration in Mens Notions of Things; and that now, after our Conſtitution has maintain'd

it ſelf upon this Foot, againſt all Deſigns and Attempts that have been made upon it, for above twenty Years, thoſe very Men, and that Party, who endeavour'd to place the Revolution then, upon King *James*'s voluntary Deſertion, which they call'd *Abdication*, ſhould now, without any Reaſon given, be for changing that Foundation, and do all they can, to put it upon King *James*'s Foot of Force and Reſiſtance. What, *My Lords*, are we endeavouring, after twenty Years, to make King *James*'s Title better now than any of his Friends could make it then, and not only finding out Arguments they never thought of, but impeaching any that dare ſo much as queſtion the Truth and Force of them? This, *My Lords*, ſeems very ſtrange.

My Lords, I cannot but take notice to your Lordſhips, of what was ſaid by that noble Lord, who ſpoke laſt, becauſe, to me it appears to be a Matter of the laſt Conſequence, to the Honour of her preſent Majeſty. He told your Lordſhips, that the beſt Title her Majeſty had to the Crown, was her Parliamentary Title. I muſt take liberty to affirm the quite contrary; and that, in my opinion, the beſt Title her Majeſty has, is her Hereditary Title; tho' I deny not, but that the Act of Parliament is a Strengthening and Confirmation of that Title: But I deny a Parliamentary-Title to be the only, or the beſt Title that the Queen has to the Crown ſhe wears. And in ſaying this, I do not fear the malicious Reflections of having a ſquinting Regard to the Title of any Perſon on the other ſide the Water; for in affirming (as I now do to your Lordſhips) that her Majeſty is my Rightful and Lawful Queen, by Right of Inheritance; and as ſhe is Daughter to King *James* the Second, I do in ſo many Words affirm alſo, that there is no other Perſon, the Rightful and Lawful Heir to King *James*, but herſelf. And if the preſent Impeachment of Dr. *Sacheverell* ſhall have this Effect (as I hope it will) to convince the Nation of the undoubted Truth of her Majeſty's Right of Inheritance to the

the Crown, (a Matter now ſo induſtriouſly oppos'd) the Security this will bring to her Majeſty's Perſon and Crown, and to the Succeſſion in the Proteſtant Line, and illuſtrious Houſe of *Hanover* afterwards, ſhall prevail with me eaſily to pardon any warm and unguarded Expreſſions, that the Doctor may here and there have dropt, and made uſe of in any of his Diſcourſes.

The Biſhop of Salisbury's *Speech in the Houſe of Lords, on the firſt Article of the Impeachment of Dr.* Henry Sacheverell.

THE Council for the Priſoner did ſo plainly and fully yield all that any Loyal Subject has ever pretended to, that in Caſes of extreme Neceſſity, Self-defence and Reſiſtance were lawful, and that this was the Caſe at the Revolution; that it may not be neceſſary to ſay any thing further on this head, if it had not been that the Evidence they brought ſeem'd to carry this Matter much further, and that the Priſoner himſelf allow'd of no Exception in Caſes of Neceſſity. And ſince it is grown to be a vulgar Opinion, That by the Doctrine of the Church of *England*, all Reſiſtance in any Caſe whatſoever, without Exception, is condemn'd; I think it is incumbent on me, who have examin'd this Matter long and carefully, to give you ſuch a clear Account of this Point, as may as fully ſatisfy you as it did my ſelf.

I ſerved in the Revolution, and promoted it all I could. I ſerved as Chaplain to the late King: I had no Command, and carried no Arms, but I was ſo far engag'd in it, that if I could ſee that I had gone out of the way in that (and the many Up-and-Downs we have gone thro' ſince, has given much occaſion to reflect on that Tranſaction) I ſhould hold myſelf unworthy to appear longer, either in this Habit, or in this Great Aſſembly; but ſhould think myſelf bound to paſs away the reſt of my Life in Retirement or Sorrow. There is nothing more certain in Reli-

gion, than that we ought to repent of every Sin we have committed; and that we cannot truely repent, unleſs we repair or reſtore, as far as it is in our Power.

The Occaſion that the Apoſtles had to write what we find in their Epiſtles, with relation to Government, was this: The Jews had a Notion among them from a Paſſage in *Deuteronomy*, that they were only to ſet a King over them, *One from among their Brethren, and not a Stranger.* From whence it is, That to this Day they do not think they are bound in Conſcience to obey any Magiſtrate, who is not one of their Nation. Page 650. Now the firſt Converts to Chriſtianity being Jews, the Apoſtles took care that they ſhould not bring this dangerous Notion with them into the Chriſtian Religion: But they did not meddle to determine where this Authority was lodg'd, that was to be gather'd out of the ſeveral Conſtitutions: They did not determine how much was due to the Emperor, and how much to the Senate; and tho' not long after thoſe Epiſtles were writ, the Senate condemn'd *Nero* to die *more majorum*, to be whip'd to Death, none of the Chriſtians interpoſed in that Matter. He prevented that infamous Death by his own Hands: And the Primitive Chriſtians reckon'd it one of the Articles of the Glory of their Religion, that their firſt Perſecutor came to ſuch an End.

The Primitive Chriſtians had no Laws in their Favour, but many againſt them; ſo their patient ſuffering ſo many Perſecutions according to the Laws of the Empire, under which they liv'd, was conform to the Doctrine laid down by the Apoſtles. When they came afterwards to have the Protection of Laws, they claim'd the Benefit of them, not without great Violence, when they thought an Infraction was made on thoſe Laws; which broke out into great Tumults, in many of the chief Cities of the Empire, not excepting the Imperial City itſelf.

But to proceed with the Hiſtory of our Church: When the Articles of Religion were ſettled, the

Book

Books of the *Apocrypha* were indeed declar'd not to be a part of the Canon of the Scripture, but yet to be uſeful for the *Example of Life*, and the *Inſtruction of Manners*. A great Part of theſe are the Books of the *Maccabees*, which contain the Hiſtory of the Jews ſhaking off the Yoke of the Kings of *Syria*, when they were broke in upon by a Total Overthrow of their whole Law, and an unrelenting Perſecution. *Mattathias* a private Prieſt began the Reſiſtance which was carried on by his Children, till they ſhook off the *Syrian* Yoke, and form'd themſelves into a free Government, under the Family of the *Maccabees*. It were eaſy to ſhew that the Jews had been for above 400 Years ſubject, firſt to the *Babylonian*, then to the *Perſian*, and at laſt to the *Grecian* Empire: So that by a long Preſcription they were Subjects to the Kings of *Syria*. It were eaſy alſo to ſhew, that this Reſiſtance was foretold by *Daniel*, in Terms of high Commendation, and is alſo mention'd in the Epiſtle to the *Hebrews*, as the Work and Effect of their *Faith*. If then all Reſiſtance to illegal and barbarous Perſecution is unlawful; theſe Books contain nothing but a Hiſtory of Rebellion, and all the Devotion that runs thro' them, is but a Cant, and inſtead of reading them as *Example of Life*, and *Inſtruction of Manners*, we ought to tear them out of our Bibles with Deteſtation. I ſhall afterwards ſhew what uſe was made of theſe Books, not only by private Writers of our Church, but by what the whole body in Convocation was about to determine.

The next Step to be made, is, to conſider the Homilies: The Second Book of Homilies, which has the Homilies in it againſt *Wilful Rebellion*, is generally believed to have been compos'd by Biſhop *Jewell*, who was by much the beſt Writer in that time. It is certain, he underſtood the meaning of them well: Now I will read you two Paſſages out of his Defence of his Apology for the Church of *England*; from whence we may clearly gather what his Notion of Rebellion was, and

that

that he thought a Defence againſt unjuſt and illegal Violence was not Rebellion. In one place he has theſe Words;

The Nobles of Scotland *neither drew the Sword, nor attempted War againſt the Prince: They ſought only the Continuance of God's undoubted Truths, and the Defence of their own Lives againſt your barbarous and cruel Invaſions: They remember'd, beſides all other Warnings, your late Dealings at* Vaſſy, *where great Numbers of their Brethren were murder'd, being together at their Prayers in the Church, holding up their Innocent Hands to Heaven, and calling upon God.* In another place he writes, *Neither do any of all theſe* (Luther, Melanchthon) *teach the People to rebel againſt their Prince, but only to defend themſelves by all lawful Means againſt Oppreſſions; as did* David *againſt* Saul, *ſo do the Nobles in* France *to this Day, they ſeek not to kill, but to ſave their own Lives.*

Theſe Paſſages ſhew that he look'd on Rebellion to be a violent Riſing againſt a Prince executing the Laws; which was the Caſe of the Three Rebellions in *England* that they had in view: That in King *Henry* the VIIIth's, in King *Edward*'s, and in Queen *Elizabeth*'s Time, where the Papiſts took Arms againſt their Prince, who was executing Laws made in Matters of Religion, and that with a great Gentleneſs. Of the Eleven Paſſages quoted by the Priſoner out of the Homilies, Five plainly relate only to the Coercing the Perſon of the Prince, in which *David* is ſet in Oppoſition to thoſe Rebels: Now, tho' he indeed defended himſelf, yet he had a juſt and ſacred Tenderneſs to the Perſon of *Saul*, when he had him in his Power, which is certainly ſacred by our Conſtitution. Five of them relate to wicked Princes. It was never pretended by any who pleaded for Neceſſary Defence, that the bad Life of a Prince can be a juſt Cauſe of Reſiſtance: Yet that was then pretended; for K. *Henry* VIII. had given too much occaſion to reckon him a wicked Prince. So there is only one of all the

Paſſages

Paſſages quoted from thoſe Homilies, that relates ſimply to Rebellion in general: And it has appear'd what Biſhop *Jewell*'s Senſe of the Matter was. There is alſo a Prayer at the end of every Diviſion of the Homily againſt *Wilful Rebellion*, (and by the by *Wilful* was not put in the Title for nothing) for thoſe oppreſſed by Tyranny in other Parts, that they might be relieved, and that thoſe who were in fear of their Cruelty might be comforted.

Let us next look thro' Queen *Elizabeth*'s Long and Glorious Reign, and ſee what was the conſtant Maxim of that Time.

The Year after the Queen came to the Crown, the War in *Scotland* broke out between the Queen Regent that govern'd by Commiſſion, from her Daughter then Queen of *France*, and the Lords in *Scotland*. She, to obtain the Matrimonial Crown to be ſent to *Francis* II. gave Aſſurances for the Exerciſe of the Reformed Religion; but the Point being gain'd, ſhe broke all her Promiſes, and reſolv'd to force them to return to the Exerciſe of the Popiſh Religion. Upon which the Lords of *Scotland* formed themſelves into a Body, and were called the Lords of the Congregation. Forces were ſent from *France* to aſſiſt the Queen Regent; Upon that Queen *Elizabeth* entered into an Agreement with the *Scottiſh* Lords, and ſent an Army to their Aſſiſtance, which continued in *Scotland* till all Matters were ſettled by the Pacification of *Leith*: And in a *Manifeſto* that I have in my Hands, ſet forth 25 Years after that, I find her reflecting on that Interpoſition in the Affairs of that Nation, with great Satisfaction. Page 651.

The Year after this War was ended, upon *Francis* the IId's Death, *Charles* the IXth, who was a Child, ſucceeded in *France*. Edicts were granted in Favour of the Proteſtants: Theſe were ſoon after broken by the Triumvirat, and upon that follow'd a Series of Wars often pacified, but always breaking out again, by reaſon of the Violence and Cruelty of the Government. All theſe Wars, till *Henry* the IVth was ſettled on the Throne,

Throne, were in a Courſe of 28 Years, that which ſome would call *Rebellion*, being carried on againſt two ſucceeding Kings. Yet the Queen was in all that time ſtill aſſiſting them with Men and Money.

In the Year 1568, the Provinces in the *Netherlands* threw off the *Spaniſh* Yoke, that was become ſevere and cruel. The Queen for ſome Years aſſiſted them more covertly; but when the Prince of *Orange* was kill'd, and they were in danger of being over run, ſhe took them more openly into her Protection; and by the *Manifeſto* which I have in my Hands, ſhe publiſh'd the Grounds upon which ſhe proceeded. She laid down this for a Foundation, That there had been an ancient League not only between the Crown of *England*, and the Princes of the *Netherlands*, but between the Subjects of both Countries, under their Seals interchangeably, for all friendly Offices.

Upon King *James*'s coming to the Crown, the firſt Negotiation was for a Peace between *Spain* and the *United Provinces*, which laſted ſeveral Years. The States inſiſted on a Preliminary, That they ſhould be acknowledged Free, Sovereign and independent States; the *Spaniards* would not yield to this, nor would the States recede from it. Some here in *England* began to ſay, They were form'd in Rebellion, and ought not to carry their Pretenſions too far. Upon that, King *James* ſuffer'd a Convocation to meet; and a Book of Canons, with relation to the ſupreme Authority, was prepar'd; in which, tho' the Authority of the Prince, even when he becomes a Tyrant, is carried very far; yet the Caſe of the *Maccabees* is ſtated; and it was determined, That when a new Government, tho' begun in a Revolt, is come to a thorough Settlement, it may be own'd as Lawful. King *James*, who was jealous enough of the regal Authority, yet did not like their carrying theſe Matters ſo far. He order'd the whole Matter to be let fall ſo entirely, that there is not a Word of it in the Books of Convocation:

But

But Archbiſhop *Sancroft* found this Collection of Canons at *Durham* under Dr. *Overhall*'s Hand, which he copied out, and licenced the Book a few Days before he fell under his Suſpenſion. I ſoon ſaw that it had a Relation to the Affairs in *Holland*; for the *Dutch* delighted to compare their firſt Beginnings to thoſe of the *Jews* in *Antiochus*'s Time. They compared King *Philip* to *Antiochus Epiphanes*, and the Prince of *Orange* to *Judas Maccabeus*: But I ſaw much clearer into the Matter by an Original Letter of King *James*, which a worthy Gentleman ſent me. I knew his Hand well, the Letter is in Print; but I will read the Particulars out of it. It is directed to Dr. *Abbot*, afterwards Archbiſhop of *Canterbury*. It begun with cenſuring ſome Poſitions concerning a King in Poſſeſſion, the ſame with our modern Term of a King *de facto*. He goes on in theſe Words, *My Reaſon of calling you together, was to give your Judgment, how far a Chriſtian, and a Proteſtant King, may concur to aſſiſt his Neighbours to ſhake off their Obedience to their own Sovereign, upon the Account of Oppreſſion, Tyranny, or what elſe you like to name it. In the late Queen's Time, this Kingdom was very free in aſſiſting the* Hollanders *both with Arms and Advice; and none of your Coat ever told me, that any ſcrupled about it in her Reign. Upon my coming to* England, *you may know it came from ſome of your ſelves to raiſe Scruples about this Matter; yet I never took any Notice of theſe Scruples, till the Affairs of* Spain *and* Holland *forced me to it. I call'd my Clergy together, to ſatisfy not ſo much me, as the World about us, of the Juſtneſs of my owning the* Hollanders *at this Time. This I needed not to have done, and you have forced me to ſay, I wiſh I had not.* He reflects on thoſe who had a great Averſion to the Notion of God's being the Author of Sin, which plainly points at Dr. *Overall*, who was the firſt Man of Note among us, that oppoſed the *Calviniſts* Doctrine of Predeſtination; yet he ſays, *They had gone to the Threſhold of it, by ſaying,*

That

That even Tyranny was God's Authority, and ſhould be reverenced as ſuch. He concludes, *Theſe were edg'd Tools, and that therefore they were to let them reſt.* Here is a full Account of King *James*'s Thoughts of this Matter, which was then the chief Subject of Diſcourſe all *Europe* over. He had Twelve Years before this, ſhewed on an eminent Occaſion, that he owned the States, when he invited them in the Year 1593. to Chriſten his Eldeſt Son, Prince *Henry*. They were ſenſible of the great Honour done them by it; and tho' they were then but Low, they ſent an Embaſſy, with a noble Preſent of Gold Plate, to aſſiſt on that Occaſion. This Negotiation ſtuck for ſeveral Years, the *Spaniards* refuſing to own them in Expreſs Words: The Temper found was, they were treated with *(tanquam)* as with Free States; and the Matter went no further at that time, than a Truce for ſome Years, which was concluded in the Year 1609. This lets us ſee, That the Words in King *James*'s Speech that Year to his Parliament, were not chance Words that fell careleſsly from him, *A King leaves to be a King, and degenerates into a Tyrant, as ſoon as he leaves off to govern by Law: In which caſe the King's Conſcience may ſpeak to him, as the poor Woman to* Philip *of* Macedon, *Either govern by Law, or ceaſe to be a King.*

Page 652.

My Lords, You ſee how this Matter ſtood during King *James*'s Reign. In the firſt Year of King *Charles*'s Reign, *Grotius*'s Book *de Jure Belli & Pacis*, was publiſhed at *Paris*, dedicated to the King of *France*, while *France* was under the Adminiſtration of the wiſeſt and moſt jealous Miniſter of the laſt Age, Cardinal *Richelieu*. In that Book, in which he aſſerts the Rights of Princes, with great Zeal, yet he enumerates many Caſes, in which it is Lawful to reſiſt, particularly that of a total Subverſion: And that Book is now all *Europe* over in the higheſt Reputation of any Book that the Modern Ages have produc'd. In the beginning of King *Charles*'s Reign, a War broke out in *France*, againſt the Pro-

Proteſtants; upon which he ſent over Ambaſſadors, by whoſe Mediation a Peace was concluded; but that being ill kept, the War broke out again; and the King thought himſelf bound by his Mediation to protect the Proteſtants. So in the Second Seſſion of the Parliament, 1621. in the Demand of a Supply that the Lord Keeper *Coventry* made in the King's Name, theſe Words are to be found, France *is ſway'd by the Popiſh Faction; and tho' by his Majeſty's Mediation, there were Articles of Agreement between that King and his Subjects, that Treaty had been broke, and thoſe of the Reformed Religion will be ruined without preſent Help.* Upon this the Commons petitioned the King for a Faſt, and deſired the Concurrence of the Lords, who join'd with them in it. The King granted it, and an Office was compos'd ſuitable to the Occaſion; in which, among other Devotions, the Nation was directed to pray for all thoſe, *who here or elſewhere were fighting God's Battles and Defending his Altars.* Thus the whole Body of the Legiſlature did concur for a Faſt for that, which, if this Doctrine is true, was no better than Rebellion; and yet the whole Nation, Clergy and Laity, were requir'd to pray for Succeſs in it.

But to complete this View of the Doctrine of our Church, it is to be conſider'd, That when a Year before this, while the Loan or Benevolence were carried on, ſome officious Divines made uſe of thoſe Expreſſions of Kings having their Power from God, as importing an Authority of a Nature ſuperiour to the Laws of the Land. One of theſe, Dr. *Manwaring*, was Impeached, and had a ſevere Sentence paſſed on him for it. So I have now made it out, beyond, I hope, the Poſſibility of Contradiction, that for Seventy Years together, from 1558, to 1628, the Lawfulneſs of Self-defence in the Caſe of illegal and violent Cruelty, was the publick and conſtant Doctrine of this Church.

Theſe were the beſt and happieſt Times of our Church, as is often repeated by the Earl of *Clarendon:*

rendon: From theſe we ought to take the Standard of our Doctrine.

I go next to ſhew what was the common Doctrine for the next Sixty Years, from 1628, to 1688. I muſt yield up the firſt twelve Years: For upon the unhappy Miſunderſtanding between the King and that Parliament, there was a long Diſcontinuance of Parliaments, then the lately condemned Doctrine was again in Vogue; and nothing was ſo much heard of, as the Law of Government that was from God, antecedent to all Human Laws: Out of this ſprung illegal Impriſonments, illegal Monopolies, ſevere Proceedings in the Star-Chamber, but above all, the Ship-Money. Theſe things put the Nation in an Univerſal Diſ-jointing and Feebleneſs. And when an unavoidable Neceſſity forced that King to call a Parliament, the fatal Effects of thoſe Counſels broke out terribly. I know many fancy, that the War is to be charged on the Principles of Self-defence: They are much miſtaken. I had occaſion to ſee a great way into the Secret of that time, when I examin'd the Papers relating to the two Dukes of *Hamilton*. I knew a great deal more ſince from two Perſons of unqueſtionable Integrity, who knew the Secrets of that time, the Lord *Hollis*, and Sir *Harbottle Grimſtone*; but all receiv'd a full Confirmation, when I found it agreed perfectly with the noble Account given by the Earl of *Clarendon*.

No body dreamt of a War, nor had they any Principles leading to it. But there was an unhappy Train of Accidents that hindred Matters from being brought to a Settlement, even while the King was granting all they could deſire. Stories were carried by Perſons about both the King and Queen, of Words let fall, that made them conclude, there were ſtill ill Deſigns on Foot, againſt the Laws that were then paſſed. But that which brought all to a Criſis, was the Diſcovery of a Negotiation, to engage the Army to declare againſt the Parliament. Whoſoever compares the Depoſitions in *Ruſhworth*, with the

the Account given of that Matter by the Earl of *Clarendon*, will ſee there is a great deal more in the one, than the other is willing to believe; tho' he acknowledges they had both *Goring*'s Evidence, and *Piercy*'s Letter with them. I will not take it upon me to determine, whether they believ'd too much, or the Earl of *Clarendon* too little. Page 653.

Thus the true Occaſion of the War, was a Jealouſy, that a Conduct of 15 Years had given too much ground for; and that was ſtill unhappily kept up, by a fatal Train of Errors in every ſtep that was made. The great Concuſſion that the War gave the Nation, and the barbarous Effuſion of ſo much Blood, eſpecially of the Royal Blood of that Bleſſed KING, had at laſt a happy, tho' a late Concluſion in the *Reſtoration*: And it's no wonder, if ſuch a Series of Tragical Events, begot a General Horror at the Occaſion of them. But then it was, that had it not been for the Firmneſs of the Earl of *Clarendon* to his *Engliſh* Principles, the Liberties of the Nation had been deliver'd up.

It is to his Memory, that we owe our being a free People; for he with his two great Friends, the Duke of *Ormond*, and the Earl of *Southampton*, check'd the Forwardneſs of ſome who were deſirous to load the Crown with Prerogative and Revenue. He ſtopt all this, which being afterwards odiouſly repreſented, brought on him that great and laſting, but honourable Diſgrace. The Earl of *Southampton*, whoſe Death went a little before his Fall, and perhaps haſten'd it the ſooner, ſaid to many about him, that he was a true Proteſtant, and an honeſt *Engliſhman*; and that the Nation would feel the Effects of his being removed, whenſoever it might happen,

That Lord, in the great Settlement after the Reſtoration, would carry things no farther than to repeal what had been extorted by the Tumults; and in the matter of the Militia-Act, and the Oaths relating to it, all was more cautiouſly worded than is commonly underſtood. To the

Word *Commiſſion'd by the King*, ſome indeed moved, that the Word *Lawfully* might be added, to make all plain. This was preſs'd in the Houſe of Commons by *Vaughan*, afterward Lord Chief Juſtice of the Common-Pleas. The Attorney General, afterwards Lord Chancellor *Nottingham*, anſwer'd, That was not neceſſary, for the Word *Commiſſion* imported it; ſince, if it was not Lawfully iſſued out, to Lawful Perſons, and for a Lawful Reaſon, it was no *Commiſſion*; and the whole Houſe aſſented to this: Yet in the Houſe of Lords, the ſame Word *Lawfully* was preſſed to be added by the Earl of *Southampton*, who was anſwer'd by the Earl of *Angleſey*, to the ſame purpoſe with what had been ſaid in the Houſe of Commons. He indeed inſiſted to have the Word added, becauſe it would clear all Difficulties with many, who not having heard of the Senſe given in both Houſes, might fancy, that any ſort of *Commiſſion* being granted, it would not be Lawful to reſiſt it. He did not prevail; for it was ſaid, That this Explanation being the Senſe of both Houſes, it would be ſoon ſpread and known over the Nation. In this Senſe, it is certain, that it is not lawful to take Arms againſt any ſo commiſſion'd by the King; for that were to take Arms againſt the King's Commiſſion in the Execution of the Law, which is certainly a reſiſting the Ordinance of God, *which whoſoever do, they ſhall receive to themſelves Damnation.*

It was no Wonder, if after ſuch a War the Doctrine of *Non-Reſiſtance* was preach'd and preſs'd with more than ordinary Warmth, and without any Exceptions; yet ſome ſtill kept theſe in view: So did both Dr. *Falkner* and myſelf.

I found the ill Effects that the carrying this Matter ſo far, had on the Mind of that unfortunate Prince, King *James*; for in the Year 1675, when he was pleas'd to admit me to much free Converſation with him, among many other things, I told him, it was impoſſible for him to reign in quiet in this Nation, being of that Religion: He anſwer'd me quick, Does not the Church of

England

England maintain the Doctrine of *Non-Reſiſtance* and *Paſſive Obedience*? I begg'd of him not to depend on that; for there was a Diſtinction in that matter, that would be found out when Men thought they needed it. I now come to tell your Lordſhips, how right I judged.---------

It is true, they paſs'd a very pompous Decree at *Oxford* 1683. but you ſhall hear how long they ſtood to it. In Summer, 1686, the Prince of *Orange* was pleas'd to receive me into his Service with a particular Confidence. Soon after the Eccleſiaſtical Commiſſion was ſet up, and upon ſome Proceedings before that Board, he was deſir'd from *England* to break with King *James* upon that Head. I oppoſed this, and ſaid, I was convinced, that Commiſſion was againſt Law, and would have ill Effects, but it did not ſtrike at the Whole. This was more warmly preſſed upon the Proceedings againſt *Magdalen* College. I ſtill ſtood to my Ground; and told both Prince and Princeſs, That if a Breach ſhould follow on theſe Matters, I could not ſerve. When indeed the Declaration was publiſh'd a ſecond time, with a Reſolution to have it carried thro'; and that many Laws were diſpenſed with at pleaſure; and Perſons who were under legal Diſabilities, were made Judges, Sheriffs and Magiſtrates; all whoſe Actings were ſo many Nullities: Then I thought here was a total Subverſion of our Conſtitution; which from being a Legal one, was made precarious, ſubject to mere Will and Pleaſure. So I was ready to ſerve in the Revolution.

Some Days after we came to *Exeter*, Sir *Edward Seymour* came thither, and he preſently ſent for me: When I came to him, he asked me Why were we a Rope of Sand, and had not an Aſſociation? I ſaid, Becauſe we had not yet a Man of his Weight to begin the Motion: He ſaid, if we had not one by to Morrow, he would leave us before Night. I preſently ſaw a Noble Duke, now in my Eye, and acquainted him with this: He went to the Prince, who approving of

Page 654. it, an Aſſociation was prepar'd, and laid on the Table next Morning; and was after that ſigned by all who came to wait on the Prince. Three Days after we left *Exeter*, a Head of a College came to the Prince, to invite him to come to *Oxford*, aſſuring him, that the Univerſity would declare for him. He went as near it as *Abingdon*, but then the ſudden Turn of Affairs at *London* obliging him to haſte up, the Aſſociation was ſent thither, and was ſigned by the Heads of the Colleges, and many others there; ſome doing it in a particular Warmth of Expreſſion, and ſaying, That their Hearts as well as their Hands went with it. Upon what Diſappointments or other Views, I cannot tell, this Contradiction to their famed Decree, five Years after it was made, ſeem'd to take another Turn back to it again; and the Notion of a King *de facto*, which is but a ſofter Word for an Uſurper, came in Vogue.

The Parliament, to prevent the ill Effects of that, ſtudied to ſecure the Government, *Firſt*, by an Aſſociation, and then by an Abjuration. I, who was always againſt every thing that might break in upon Conſcience, was for making theſe only voluntary; but they were Enacted, and they were generally taken. A Noble Lord on the Earls Bench, procur'd me the Sight of a Letter, that went about to perſuade the taking the Abjuration, that he had from a Place where he believed it had its Effect; where I found this Diſtinction, that the Abjuring any Right whatſoever that the Pretender might claim, was only meant of a Legal Right, and that it had no relation to *Birth-Right*, or to *Divine Right*. This agreed with a Report that went then current, that a Perſon, in a great Poſt, ſent a Meſſage to an Honourable Gentleman, who would not take the Abjuration, that if he had an half Hour's Diſcourſe with him, he doubted not to be able to convince him, that he might take the Abjuration, without departing from any of his Principles. Towards the End of the laſt Reign, a bold Attempt was made on the King's Supremacy, by an Incendiary,

who

who is ſuppoſed to have no ſmall Share in this Matter now before your Lordſhips: But the Attack on the Supremacy being liable to a *Præmunire*, it was turn'd with much Malice, and manag'd with great Prevarication, againſt the Biſhops, who adhered firmly to their Duty to the King. How great a Diſjointing that has brought on this Church, is too viſible all the Nation over; and it tends to carry on the wicked Deſign of diſtracting the Church, and undermining the Government.

By the time the Queen was on the Throne, or ſoon after, the *Rehearſal* began to be ſpread over the Nation, two of them a Week, which continu'd for ſeveral Years together, to be publiſh'd without Check or Controul. It was all thro' one Argument againſt the Queen's Right to the Crown: That, tho' it was diverſified with Incidents and Digreſſions, was kept always in view. The Clergy were in many Places drawn into Subſcriptions for this Paper. This look'd like a Deſign long conniv'd at, to have the Queen's Title undermin'd: Beſides this, we had a ſwarm of Pamphlets every Year to the ſame Purpoſe, and, as was believed, writ by the ſame Hand. One ſold at the Door of the Houſe, with the Title of King *William*'s *Exorbitant Grants*, did plainly call him an Uſurper: and ſtarting an Objection againſt the Queen's poſſeſſing the Throne, gave it this Anſwer, That ſhe did well to keep it till ſhe could deliver it up to the righteous Heir. At that time there was quick Proſecution of a Paper publiſh'd, with the Title of *The Shorteſt Way with the Diſſenters*; and upon that, I brought that Pamphlet to a great Miniſter, and offer'd to ſhew him this Paſſage in it, to ſee if there ſhould be a Proſecution of this order'd. He turn'd from me; ſo whether he heard me or not, I cannot tell: I am ſure, if he ſays he did not, I will believe him. No Proſecution follow'd, and the Rehearſal went on. The Clergy in many Places, met at a Coffee-Houſe on *Saturdays*, to read the Rehearſals of the Week, which had very ill Effects

in moſt Places. I know it may be ſaid, That the Queen's Learned Council ought to have look'd after theſe things: But we all know, that they ſtay till they receive Orders from the Miniſtry. The Courſe of that Treaſonable Paper has been now for ſome time ſtopt, ſo we ſee there is ſome Change in the Miniſtry.

But to compleat the Inſolence of the Enemies of the Queen and of the Proteſtant Succeſſion, they had the Impudence to give it out; That the Queen ſecretly favour'd them. And as this, we all know, has been long whiſper'd about among us, ſo it was more boldly given out in *Scotland*; which oblig'd one of the Queen's Miniſters in that Parliament, in a Speech that was printed, to contradict this treaſonable and diſhonourable Suggeſtion, That as ſome Divines would have it, that there was in God a Secret as well as a reveal'd Will, and that theſe might be contrary to one another; ſo they would faſten an Imputation on the Queen, that while ſhe reveal'd her Will one way, ſhe had a ſecret Will another way; which he ſolemnly affirmed to be falſe, and highly injurous to the Queen.

While the Pamphlets and theſe Reports were thus ſet about, Mr. *Hoadly* thought that it became him to aſſert the Queen's Title, by juſtifying the Revolution, out of which it riſes. But what an Outcry was rais'd on this, that one durſt diſturb the Progreſs of a wicked Opinion, that was viſibly deſign'd to overturn the Government: And yet he aſſerted nothing, but what the Counſel for the Priſoner did all fully and plainly own, That in the Caſes of extreme Neceſſity, an Exception to the Doctrine was to be admitted, and that that was the Caſe at the Revolution.

But as theſe Notions have been long let run among us, ſo they have appeared in a moſt violent and unguarded Manner, ever ſince the Attempt of the Pretender; and more of late, ſince the Preliminaries upon the Overtures for a Peace, ſeem to extinguiſh their Hopes. What Sermons on this Head are preach'd in this City, at Aſſizes, at *Bath*,

Bath, and at many Cathedrals? Furious Men fit themſelves with ſome hot Sermons, which they carry about from Place to Place, to poiſon the Nation. This has not only the viſible Effect deſigned by it, of ſhaking many in their Allegiance to the Queen, and in their adhering to the Proteſtant Succeſſion; but it has a curſed Effect on many others, on whom this their Deſign does not ſucceed.

I am very ſenſible there is a great deal of Impiety and Infidelity now ſpread thro' the Nation: This gives every good Mind all poſſible Horror; but I muſt tell your Lordſhips, on what a great Part of it is founded: for ſince my Converſation with *Wilmot*, Earl of *Rocheſter*, I have had many Occaſions to diſcourſe with Perſons tainted with thoſe wicked Principles; and I do affirm it, that the greateſt Prejudice theſe Perſons have at Religion, at the Clergy, and at the publick Worſhip of God, is this, that they ſay, They ſee Clergymen take Oaths, and uſe all Prayers, both ordinary and extraordinary, for the Government, and yet in their Actings and Diſcourſes, and of late in their Sermons, they ſhew viſibly that they look another Way: From whence they conclude, They are a mercenary Sort of People without Conſcience. Page 655.

I hope there are not many that are ſo corrupted and ſo ſcandalous: I am ſure I know a great many that are far otherwiſe, who preach, ſpeak and act as they ſwear and pray; but thoſe who act in another way, are noiſy and impudent, and ſo bring an Imputation on the whole Body. And unleſs an effectual Stop is put to this Diſtemper, it is not poſſible to foreſee all the ill Conſequences that may follow upon it.

I have, I am afraid, wearied your Lordſhips; but I thought it was neceſſary, once for all, to enlarge copiouſly on this Argument. And now to come cloſe to the Article, and the Sermon, for I meddle not at all with the Perſon of the Man, whatever general Expreſſions might very well have been uſed, in ſetting forth *Paſſive Obedience* and

Non-Reſiſtance before the *Revolution*; becauſe odious Caſes ought not to be ſuppoſed, and therefore are not to be named, yet ſince *Reſiſtance* was uſed in the *Revolution*, and that the late King invited all the Subjects to join with him, which was in them certainly Reſiſtance; and ſince the Lawfulneſs of the *Revolution* is ſo much controverted, the condemning all *Reſiſtance* in ſuch crude and general Terms, is certainly a condemning the *Revolution*. And this is further aggravated from thoſe Limitations on our Obedience, in an Act paſt ſoon after the *Revolution*, by which, in Caſe our Princes turn *Papiſts*, or marry *Papiſts*, the Subjects are in expreſs Words diſcharg'd from their Allegiance to them. Certainly this puts an End to the Notion of *Non Reſiſtance* in any Caſe, or on any Pretence whatſoever. For theſe Reaſons, I think the firſt Article of this Impeachment, is both well grounded, and fully made out.

The Biſhop of Oxford's *Speech in the Houſe of Lords, on the firſt Article of the Impeachment of Dr.* Henry Sacheverell.

My Lords,

SOme of this Bench are neceſſarily call'd up, by Words which fell from the Noble Lord who ſpake third in this Debate, who was pleas'd to mention among other ſtrange Things, *Biſhops voting contrary to their Doctrines*. The Opinions of ſeveral of the Reverend Prelates have been read before your Lordſhips in *Weſtminſter-Hall*: They were firſt quoted by the Counſel for the Defendant, and by their Order read in ſuch a partial and unfair manner, that if I may be allow'd to uſe any other Author after the ſame Way, to take a naked Propoſition out of his Book, and not conſider the Coherence or Dependance of the Words, how it may be explain'd or limited in other Places, to read juſt ſo far as may ſerve my Purpoſe, and ſtop when any thing follows that may ſet the Matter in a juſt Light, I dare undertake to make any Author ſpeak on which-ever ſide of the Queſtion I pleaſe. But

But the Managers for the Honourable Houſe of Commons did Juſtice to thoſe Reverend Prelates, by obliging the Clerk to read other Paſſages in their Books, which clearly explain'd their Opinions; and ſo the only Purpoſe that was eventually ſerv'd by producing thoſe Quotations, was that which, I fear, was not intended; the vindicating thoſe Reverend Prelates from the uncharitable Imputation of having aſſerted a Doctrine in their Writings, which they had contradicted by their Practices, in relation to the Revolution, and the Government founded upon it.

I hope to be able to reconcile the Vote which I ſhall give, with the Opinion which I have always been of, and which having not been produced below, I ſtand up to give it your Lordſhips here; being far from cenſuring, far from entertaining the leaſt diſreſpectful Thought of any that ſhall differ in Opinion from me.

I own the Subject now in debate, is a matter of great Conſequence, and of great Nicety and Tenderneſs; and that he, who ſhould preſume to entertain your Lordſhips upon it, ought to be better qualify'd, and better prepar'd than I am in other Reſpects; but I will give place to none in thoſe that follow, *viz.* in delivering myſelf with that Reſpect and Deference which is due to this Houſe, that humble Diffidence which becomes a juſt Conſciouſneſs of my own Weakneſs, and that Plainneſs and Sincerity which becomes that Character, which however unworthy of it, I have the Honour to bear; and then I am ſure I may depend upon your Lordſhips known Candor, Honour and Juſtice, that if any thing ſhould fall from me leſs correct, or leſs guarded than it ought to be, it ſhall receive the moſt favourable Conſtruction that it is capable of.

Before I deliver my Opinion, I beg leave briefly to ſtate the Queſtion; and in order to that, to lay down two Premiſes.

1. That Government in general, was in its Original Inſtitution, deſign'd for the Good of the whole Body. Men were not form'd into Societies, only

only to be Subjects of the Arbitrary Wills, the ſlaviſh Inſtruments in the gratifying the ambitious or other corrupt Deſigns, of any one or more Men; but for the Safety and Proſperity of the whole Community.

2. That in the Holy Scriptures (as far as I can find) there is no Specification of any one particular Form of Government to which all Nations and Bodies of Men, in all Times and Places ought to be ſubject; nor are there any ſuch exact Accounts of the Extent of the Power of the Governor, or Obedience and Submiſſion of the Governed, as can reach to all Caſes that may poſſibly happen.

There are many general Precepts requiring the Obedience and Submiſſion of Subjects to their Governors: *Let every Soul be ſubject to the*
Page 656. *Higher Powers: You muſt needs be ſubject not only for Wrath, but alſo for Conſcience-ſake: He that reſiſts, reſiſts the Ordinance of God: And ſubmit yourſelves to every human Conſtitution for the Lord's Sake*, &c.

But yet theſe Scriptures do not tell us how far we muſt obey and be ſubject, nor do they neceſſarily imply that there can never be any Caſes wherein we may not obey and not be ſubject, but reſiſt; becauſe there are other Places in Scripture, where other Duties are requir'd in Terms as large and general as theſe, nay in univerſal Terms, which yet muſt admit of Exceptions.

Some of the moſt zealous Contenders for the abſolute Power of the Prince, and unconditional Submiſſion of the Subject, found themſelves very much upon the fifth Commandment, *Honour thy Father and Mother*, which they expound as comprehending political as well as natural Parents; and I do not gain-ſay it: But then pray, my Lords, let us ſee in what Terms the Duty of Children to their natural Parents is requir'd in Scripture: *Children*, ſays the Apoſtle, *obey your Parents in all Things*. This Expreſſion is ſurely univerſal enough; and from hence, according to ſome Mens Reaſoning, it muſt follow, if Children muſt obey their Parents in all things, then they may reſiſt in none. But

But will any body ſay, that notwithſtanding the Univerſality of this Precept, there may not be ſome Exceptions and Limitations underſtood, both as to the active and paſſive Part of the Child's Obedience? As to the active, no one will deny, but the Command muſt be reſtrain'd to *Licita & Honeſta*; they are not to obey in all things abſolutely, but in all things that are lawful and honeſt.

I do allow, that in all Governments whatſoever there is an abſolute Power lodg'd ſomewhere, With us, as I humbly conceive, that Power is lodg'd in the Legiſlature; for which I have the Authority of a great Politician and Stateſman, Sir *Thomas Smith*, who was Secretary of State to two Princes, King *Edward* VI. and Queen *Elizabeth*; who in his Book, *De Republica Angl.* a Book ſeen and allow'd, as is ſaid in the Title-Page, in that Chapter where he treats of our Parliaments, and the Authority thereof, lays down this Aſſertion, '*The moſt high and abſolute* '*Power of the Realm of* England *conſiſteth in* '*the Parliament.*' And giving particular Inſtances of that Power, among others, mentions this, '*That the Parliament gives Forms of Suc-* '*ceſſion to the Crown.*'

The executive Power with us is lodg'd with the Prince; and I do readily allow, that the Prince ſo veſted with the executive Power, and all others lawfully commiſſion'd by him, acting according to their Commiſſion, and within thoſe Laws with the Execution whereof he and they are reſpectively truſted, are irreſiſtible: The Perſon of the Prince is always inviolable; no perſonal Faults in him; no Injuries to particular Perſons, where they can have no Redreſs by Law, as in ſeveral Caſes they may have; no general Male-Adminiſtration, whereby the Publick may be greatly hurt, can juſtify any forcible Reſiſtance of his Subjects; nor any thing elſe than a total Subverſion of the Conſtitution.

But if in a legal Monarchy, where ſuch Laws have been enacted by common Conſent of Prince and

and People, as are to be the Meaſures of his Government, as well as of their Obedience, that limit his Power, as well as ſecure their Rights and Properties, the Prince ſhall change this Form of Government into an abſolute Tyranny, ſet aſide thoſe Laws, and ſet up an Arbitrary Will in the room of them. When the Caſe is plain, and when all Applications and Attempts of other Kinds prove unſucceſsful; if then the Nobles and Commons join together in defence of their antient Conſtitution, Government and Laws, I cannot call them Rebels. Allow me, my Lords, to lay before you a few things in maintenance of what I have advanced. And,

1. I would humbly offer ſome Facts, which I allow do not directly prove what I have ſaid to be true, but they do prove it to have been the Opinion of our Princes, Parliaments, Clergy and People, in the Reigns of thoſe three great Princes, Queen *Elizabeth*, King *James* and King *Charles* I. I mean the Aſſiſtances which thoſe Princes gave to the Subjects of other Countries that were reſiſting their reſpective Princes; and to enable them to do ſo, they had Subſidies given them in Parliament and Convocation - ------, and there were Prayers compos'd and uſed for the Succeſs of their Arms.

Surely, my Lords, if thoſe Princes, Parliaments, Clergy and People, had been of Opinion, that the Reſiſtance of Subjects againſt their Princes was in no caſe lawful, but always damnable Rebellion; they would never by aiding and aſſiſting ſuch Rebels, have involv'd themſelves in the Guilt, and expos'd themſelves to the dangerous Conſequences of ſuch a Sin. I mention not the particular Stories, becauſe they are better known to your Lordſhips than to me, and becauſe I doubt not but in the Courſe of this Debate, ſome Lord or other will give a larger Account of them. But I cannot forbear obſerving one thing relating to that Aſſiſtance, which that pious Prince, and now glorious Saint in Heaven King *Charles* I. gave to the *Rochellers*, who were ſurely the Subjects of the

the King of *France*: He order'd a Faſt by Proclamation, and appointed a Form of Prayer to be drawn up for the imploring of God's Bleſſing. It is highly probable, that Biſhop *Laud* had the great Hand in compoſing thoſe Prayers, he being then Biſhop of *London*, and in great Favour, and the Archbiſhop of *Canterbury*, *Abbot*, at that time in Diſgrace. But whoever compos'd them, I beg leave to read part of one of the Collects in that Office: '*O Lord God of Hoſts, that giveſt Victory* '*in the Day of Battle, and Deliverance in the* '*Time of Trouble, We beſeech thee to ſtrengthen* Page 657. '*the Hands, and encourage the Hearts of thy* '*Servants, in fighting thy Battles, and defending* '*thy Altars that are among us, and in all the* '*Reformed Churches.*' It ſeems the Reformed Churches were thought to have God's Altars among them then, however they have been villify'd ſince. But that which I would obſerve from this Paſſage is this, That neither that excellent King who commanded thoſe Prayers to be compoſed, nor the Biſhops who compoſed them, nor the Clergy and People who uſed and join'd in them, could in ſo ſolemn a manner have recommended thoſe Forces to the Divine Protection and Favour, and as ſuch as were fighting God's Battles, if they had thought they were fighting againſt God in his Vice-gerent; and as defending his Altars, if they believ'd they were reſiſting his Ordinance.

2. I could produce ſeveral Authorities in ſupport of what I have laid down, but I ſhall mention but one: It is in a Book written profeſſedly on this Subject, and the Paſſage I ſhall quote comes home in Point to the matter in hand. The Book was written in Queen *Elizabeth*'s Time; every one that is acquainted with the Hiſtory of her Reign, knows what Attempts were made by the Pope, and his Party againſt her Government and Life, by excommunicating, depoſing her, abſolving her Subjects from their Allegiance, by raiſing Tumults and Inſurrections, by Dagger, Poiſon, and what not. And 'tis certain, that they

they were theſe wicked Practices of the Pope and his Followers, and the Doctrines by which they juſtified them, that the Compilers of the Homilies, which were then made, and other Authors who then wrote about the Power of the Prince and the Duty of the Subject, had principally in their View. The Book I mean, is intitled, *The true Difference between Chriſtian Subjection and Unchriſtian Rebellion.* It is written by way of Dialogue between a Chriſtian, whom the Author calls *Theophilus*, and a Jeſuit whom he calls *Philander*. I beg leave to read a Quotation out of it. *Theophilus* the Chriſtian ſays, *I buſy not my ſelf in other Mens Common-wealths as you (the Jeſuits) do, neither will I raſhly pronounce all that reſiſt to be Rebels: Caſes may fall out even in Chriſtian Kingdoms, where the People may plead their Right againſt their Prince, and not be charg'd with Rebellion.* *Philander* the Jeſuit asks, *as when for Example?* *Theophilus* the Chriſtian replies thus: *If a Prince ſhould go about to ſubject his Kingdom to a Foreign Realm, or change the Form of the Commonwealth from Impery to Tyranny, or neglect the Laws eſtabliſh'd by common Conſent of Prince and People, to execute his own Pleaſure. In theſe and other Caſes which might be named, if the Nobles and Commons join together to defend their ancient and accuſtom'd Liberty, Regiment, and Laws, they may not well be accounted Rebels.* This Book is ſaid in the Title Page, to have been peruſed and allow'd by publick Authority; was written by a great Man, Dr. *Bilſon*, then Warden of *Wincheſter* College; printed at *Oxford* by the Univerſity Printer, and dedicated to Queen *Elizabeth*; and the Author was afterwards made Biſhop of *Wincheſter*. I could offer many other Authorities, not from falſe Sons, or perfidious Prelates of the Church, not from Men of factious and antimonarchical Principles in relation to the State; but venerable Names, Ornaments to the Ages they lived in, and ſuch as will be remembred with Honour in ſucceeding ones: But I am ſuperceded in

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producing, and your Lordſhips Trouble ſaved in hearing more particular Quotations to this purpoſe, by what is yielded by a Reverend Divine of great Parts and Learning, far enough from the Suſpicion of being prejudiced againſt the Rights of Princes, or partial to thoſe of the People, I mean the Reverend Dean of *Carliſle*, who in a *Latin* Diſcourſe preach'd and printed in this Town upon the *Duty of Submiſſion*, ſtating ſome Caſes of extreame Neceſſity, and putting the Queſtion, *Whether it may not be lawful for the People in ſuch Caſes to reſiſt*? anſwers, *Viri boni & graves*, &c. 'That good and judicious 'Men, Men that have taken great and uſeful 'Pains in defending the Rights of Princes, and 'repreſſing popular Licence, have contended that 'it is lawful:' He adds indeed, 'Whether they 'have done right or wrong, let others judge;' and does not give his own Opinion. But ſince he has granted, that ſuch Men as he has deſcribed, Men of Probity and Judgment, zealous Aſſertors of the Rights of Princes, and Repreſſors of popular Licence, have contended that in Caſes of extreme Neceſſity it is lawful for the People to defend themſelves; I may comfort my ſelf if I err in my Opinion, that I err in good Company. But I humbly conceive I do not err, and that,

3. For this plain Reaſon, That if it be utterly unlawful to reſiſt in any Caſe whatſoever, even that of a total Subverſion of the Conſtitution and Laws; then there is no Diſtinction of Governments, of abſolute, I mean, and limited; of if there be a Diſtinction, it is a nominal one, without any real Difference. For what Difference is there between a Prince's governing arbitrarily without Law, and governing abitrarily againſt Law? betwixt having no Laws at all, and having precarious Laws that depend intirely on the Will of the Prince, whether he will obſerve one of them, or ſubvert them all; and if he does, the People cannot help themſelves?

But, my Lords, I hope and believe that there is a real Diſtinction of Governments, and that the Subjects

Subjects of all Governments are not in the ſame wretched Condition that thoſe of *France* and *Turkey* are in. I hope we have not boaſted falſly or vainly of our own Form of Government, that we are bleſſed with a Conſtitution more happy than any other Nation in the World enjoys, that allows and ſecures as great, and (I had almoſt ſaid) God-like Powers and Prerogatives to the Crown, as any wiſe and good Prince can deſire; a Power of doing every thing that is good, and nothing that is ill; and at the ſame time ſecures moſt valuable Rights and Privileges to the People.

What wiſe or good Prince would not rather chuſe to reign over free Subjects, than tyrannize over Slaves? To receive a willing chearful Obedience, proceeding from the Principles of Gratitude, Love and Intereſt, as well as of Duty, rather than a forced one, owing meerly to a Principle of Fear, the Principle from whence the *Indians* worſhip the Evil Spirits?

My Lords, ſuch a Frame of Government your Lordſhips have receiv'd from your Anceſtors; and I hope and truſt, that in grateful Reſpect to their Memory, and in tender regard to your Poſterity, (I ſay nothing of ourſelves, my Lords; for as for us who have the Happineſs to live under the Government of the beſt of Princes that ever Heaven bleſs'd a Nation with; for us, I ſay, were our Government as arbitrary as any in the *Eaſt*, yet I ſhould think our Rights, Liberties and Properties, and whatever is moſt dear and valuable to us, as ſafe if they depended entirely upon her Majeſty's gracious Will, as they are now they are ſecured to us by our Laws, or ſtronger Fences, (if they could be made) but I ſpeak in regard to thoſe that are to come after us; and I do hope and truſt, that as your Lordſhips have receiv'd ſuch an ineſtimable Treaſure from your Predeceſſors, you will tranſmit it inviolable to your Poſterity.

Page 658.

My

My Lords, I fear I tire you, but I muſt beg your Patience a little longer, while I expreſs my Surprize and Wonder that the Doctrine of *Paſſive Obedience*, and *Non Reſiſtance*, in the unlimited Extent in which ſome explain it, is ſo diligently inculcated, and ſo zealouſly preſs'd at this Time.

Paſſive Obedience, I own, when truly ſtated, is a truly Chriſtian Duty; a perpetual Duty as to the Obligation, but occaſional as to the Practice of it. Now Preachers do not uſually, neglecting the preſſing of other Duties of more conſtant Practice, lay out their Time and Labour in filling both Pages of their Diſcourſes with earneſt Aſſertions and violent Exhortations to the Practice of an occaſional Duty, unleſs they have ſome near Proſpect of an Occaſion for the Exerciſe of it. And yet, my Lords, has this one Duty been of late more frequently and earneſtly aſſerted and urged both from Pulpit and Preſs, than all the other Duties of Chriſtianity: And what Occaſion for this does any one pretend to have in View?

Can there be a Wretch ſo abandoned, ſo loſt to all Senſe of Gratitude and every thing that is good, as to be capable of admitting a Thought, that our gracious Queen has done, is doing, or intending to do any thing, that may give her Subjects occaſion for the Practice of this Duty? Has ſhe not ever ſince her happy Acceſſion to the Throne, poſtponed, ſacrificed her own Repoſe and Eaſe to the Quiet and Happineſs of her Subjects? Has ſhe not clearly ſhown that ſhe has nothing ſo much at Heart, as the Good and Proſperity of her People, the true Intereſt and Honour of her Kingdom, which ſhe has carried higher than any of her Royal Predeceſſors ever did before her? Has ſhe not approv'd herſelf a true Parent of her Political Children, by exerciſing as prudent a Care of, and expreſſing on all Occaſions as tender an Indulgence to them, as any natural Parents ever did towards theirs?

If then there be no Occaſion from the Conduct of our Prince, is there any Reaſon from the Be-

haviour of her People that may juſtify this extraordinary and otherwiſe unſeaſonable Zeal for this Doctrine? Do they (excepting ſuch as the Zealots for this Doctrine have excited to diſturb her peaceful Reign at Home, by rebellious and dangerous Tumults and Inſurrections) ſhew any Uneaſineſs under her Majeſty's Government, or Inclinations to throw it off? Do they not bleſs their glorious Queen and God for her? Do they not on all Occaſions expreſs their grateful Senſe of the many ineſtimable Bleſſings they enjoy thro' her Adminiſtration? Do not they conſtantly offer up their devout Prayers to God for her long Life and happy Reign? Do they not willingly pay their Taxes for the Support of her Government, cheerfully expend their Treaſure and Blood too in Defence of it?

What then can be ſaid for ſuch a Conduct, which can have no other natural Tendency than to create unreaſonable Jealouſies of her People in the Head of our Queen, and groundleſs Fears of their Queen in the Hearts of her People? Jealouſies in the Queen, that her Subjects are inclinable to rebel againſt her, when the Clergy think it neceſſary thus to preſs theſe Reſtraints upon them: and Fears in the People, when their Paſtors are ſo induſtriouſly preparing them for Sufferings.

My Lords, I would not be thought to charge upon all that hold and aſſert this Doctrine, the Conſequences which I may with too much Reaſon charge upon ſome of them; I mean ſuch as do not allow her Majeſty's Title to the Crown, but refuſe to take the Oaths to her, or join in Prayer for her, and have upon that Account form'd one of the moſt unaccountable Schiſms that ever was made in the Church. Some of theſe have engaged zealouſly in aſſerting this Doctrine; and one of them in a Paper written in Vindication of it, has not been afraid to inſinuate a Parallel between the Caſe of *Her Majeſty* and the *Pretender*, and that of *Athaliah* and *Joaſh*.

Horrid

Horrid Suggeſtion that would make one tremble! What do theſe Men mean? Any Service to her Majeſty? No: The Conſequences as to them are plain. If to reſiſt upon any Occaſion whatever be unlawful, be Rebellion, damnable Rebellion; then the Revolution was Rebellion, and all that were concern'd in it are involv'd in that Guilt; then we have continued in a Rebellion ever ſince; then if we would avoid Damnation, we muſt repent of that Sin; but there is no true Repentance without Reſtitution, and if there muſt be Reſtitution, they will tell you what that is.

I would charitably hope, that the unfortunate Perſon now in Judgment before your Lordſhips, did not intend to carry Matters ſo far: But I muſt ſay, his Doctrine as he has ſtated and managed it, under his Head of *Falſe Brotherhood*, with relation to the State, does give too great a Handle for thoſe that have ſuch Views, to improve what he has ſaid to their Purpoſes.

The Council for him, have labour'd to defend him againſt the Charge in this Article, by producing a great many Quotations out of the *Homilies*, *Statutes* and *Writings* of Divines dead and living, wherein this Doctrine has been laid down generally. They all allow'd that Caſes of extreme Neceſſity were always excepted out of this general Doctrine; and that tho' the Exception was not expreſſed, yet it was always imply'd; and they allow'd farther, that the Caſe of the Revolution was a Caſe of ſuch Neceſſity: But how did they apply this to the Caſe of their Client? Thus: They ſaid, that thoſe Divines whom they had quoted, were never found fault with for aſſerting the Doctrine in general Terms, not expreſſing but tacitly implying the Exception: Then they ask'd, Why ſhould the Doctor be charg'd for aſſerting the Doctrine in general Terms, as others had done, not expreſſing the Exception which they had not expreſs'd? Why ſhould not he be intitled to the favourble Conſtruction of

tacitly implying the Exception of Caſes of Neceſſity, ſuch a Neceſſity as they allow'd juſtify'd the Revolution ?

Indeed I ſhould have readily admitted the Plea, if the Doctor had done no more than barely aſſerted the Doctrine in general Terms, and his only Fault had been that he had not expreſſed the Exception which he tacitly imply'd : But has he done no more than this? Has he not mention'd the Caſe of the Revolution, with no other View, as I can ſee, than to expoſe it; not as an Exception out of his general Poſition, but an Objection againſt it? Our Adverſaries, ſays he, that is, thoſe that oppoſe his general Doctrine, think they have us ſure, *i.e.* effectually confute that Doctrine, by objecting the Revolution. This Objection muſt ſuppoſe that there was Reſiſtance at the Revolution; for to ſay that the general Doctrine, that it is not lawful in any Caſe to reſiſt, is not true, becauſe the Revolution was lawful, in which there was no Reſiſtance, would be a wonderful Objection indeed : I ſay, Reſiſtance muſt be ſuppos'd in the Objection, to make Senſe of it. How then does he ſolve this Objection? Does he ſay the general Doctrine always implies an Exception of Caſes of Neceſſity? That the Revolution was a Caſe of ſuch Neceſſity, and therefore that Neceſſity juſtify'd the Reſiſtance at the Revolution? No, but by advancing a ſtrange Poſition (which he proves by as ſtrange a Medium) *viz. That there was no Reſiſtance at the Revolution*: plainly implying, that if there was Reſiſtance at the Revolution, which every body knows there was, the Revolution ſtands condemned by his general Doctrine. So that I cannot ſee that his learned Council, who wanted neither Abilities nor Inclinations to ſerve him, have at all defended him againſt the Charge in this Article. But this they have effectually done, they have given up his general Doctrine, if it admits of no Exceptions; and thereby clear'd the Revolution and the neceſſary Means whereby it was brought about

Page 659.

bout, from thoſe black and odious Colours which he endeavour'd to caſt upon them.

After all, I can truly appeal to my own Heart, and a greater than it, the Searcher of it, that I am not any ways prejudiced againſt the Perſon of the unhappy Priſoner, but rather in Favour of him, as I am of all Men in his ſuffering Circumſtances, by a natural Tenderneſs (it may be a Weakneſs) but ſuch a one as I cannot help, which never ſuffers me, however obliged in Juſtice to it, to do a hard Thing to any one however deſerving it, without doing at the ſame time a hard Thing to myſelf: And if your Lordſhips ſhould be of Opinion in the Concluſion of this Trial, That the Commons have made good their Charge againſt him, I am ſure I could come into as eaſy a Sentence upon him as may be conſiſtent with the Honour and Juſtice of your Proceedings, and with that which I take to be the chief End in all Puniſhments, not ſo much the hurting the Offender, as the preventing the like Offences, and hindring others from committing them for the future.

But ſtill, my Lords, there is ſurely a Tenderneſs and Compaſſion due to our Queen, our Country, and our Poſterity; all which, I humbly apprehend, are highly concern'd in the Iſſue of this Affair.

If Clergymen may with Impunity publickly in their Sermons arraign and condemn the Revolution: Beſides the Reflections they caſt upon all the worthy Patriots that were concern'd in that great Work, the Commonalty, Gentry, and Nobility, Lords upon every Bench in this Houſe; beſides this, it muſt ſhake, it muſt ſap the very Foundation of our preſent Eſtabliſhment, as it ſtands upon the Foot of the Revolution, and utterly deſtroy our future Hopes in the Proteſtant Succeſſion, which is founded upon that Bottom only.

My Lords, I muſt humbly aſk Pardon for having treſpaſs'd ſo long upon your Patience, and will conclude with this one Word, That in my Opi-

nion, *these Practiſings of Clergy-men* (to uſe the Expreſſion of a great and eminent Prelate) *in State Matters, are of that dangerous Tendency and Conſequence, that if there be not ſome effectual Stop put to theſe Practiſings, theſe Practiſings will, in time, put an effectual End to our Conſtitution.*

The Commons had therefore Reaſon to bring this Matter in Judgment before your Lordſhips, and I think they have fully made good their Charge in the firſt Article of their Impeachment againſt Dr. *Sacheverell.*

The Biſhop of Lincoln's *Speech in the Houſe of Lords,* March *the* 17*th, at the opening of the ſecond Article of the Impeachment againſt Dr.* Sacheverell.

My Lords,

IT was the Misfortune of ſome of our Bench, that in the Proſecution of the foregoing Article of this Impeachment, a Noble Lord, who ſpoke very early to that Point, was pleaſed not only to anticipate our Judgment in that Particular; but to do it with this pretty hard Reflection, That in giving it, as he ſuppos'd we would, we ſhould vote contrary to our own Doctrine. It is not improbable but that, in the Courſe of the preſent Debate, another Arrow may be drawn out of the ſame * Quiver to ſhoot at us; and we may be told, that in defending of the † Toleration granted by Law to the Diſſenters, we ſhew ourſelves to be Apoſtates from our own Order. But from both theſe Imputations I am perſuaded both our Writings, and our Actions, will ſecure us in the Judgment of all indifferent Perſons.

The Subſtance of this Second Article of the Impeachment, which your Lordſhips are now about to enter upon, is this: ' *That Dr.* Sacheverell

* *See Dr.* Sacheverell's *Anſwer to the* 1*ſt Article of Impeachment. His Speech, Fol. Pag.* 23.

† *Dr.* Sacheverell's *Sermon at St.* Paul's, *Pag.* 8.

'verell *in his Sermon doth ſuggeſt and maintain, 'that the Toleration granted by Law is unrea- 'ſonable, and the Allowance of it unwarranta- 'ble. That he is a Falſe Brother with relation 'to God, Religion, or the Church, who defends 'Toleration, and Liberty of Conſcience. That 'Queen* Elizabeth *was deluded by Archbiſhop* 'Grindal *to the Toleration of the* Genevian *Diſ- 'cipline: And that it is the Duty of ſuperior 'Paſtors to thunder out their Eccleſiaſtical Ana- 'themas againſt Perſons entituled to the Benefit 'of the Toleration; and inſolently dares or de- 'fies, any Power on Earth to reverſe ſuch Sen- 'tences.'* This, my Lords, is the Sum of this part of the Commons Charge againſt Dr. *Sacheverell*, and I think the Managers have fully made it out; not by bare Intendments, by unneceſſary Implications, and forced Conſtructions; not by piecing together broken Sentences, and conjoining of diſtant, and independent Paſſages (as he has unjuſtly complain'd;) but by the plain Words, and neceſſary Meaning, of a very great part of his Diſcourſe. Page 660.

But before I trouble your Lordſhips with the Proof of this, give me leave, upon this Occaſion (tho' it be no part of the Impeachment laid againſt the Preacher) to obſerve to your Lordſhips what a ſtrange Account he has thought fit to publiſh of that other popular Engine, which, he ſays, has been made uſe of * to pull down the Church, and which he calls by the Name of Comprehenſion.

The Perſon who firſt concerted this ſuppoſed Deſign againſt our Church, was the late moſt Reverend Dr. *Sancroft*, then Archbiſhop of *Canterbury*. The Time was towards the End of that unhappy Reign, of which ſo much was ſaid upon the Occaſion of the foregoing Article. Then, when we were in the height of our Labours,

* *Serm.* pag. 16, 17.

defending the Church of *England* againſt the Aſſaults of Popery, and thought of nothing elſe; that Wiſe Prelate foreſeeing ſome ſuch Revolution as ſoon after was happily brought about, began to conſider how utterly unprepared they had been at the Reſtoration of King *Charles* II. to ſettle many things to the Advantage of the Church; and what a happy Opportunity had been loſt for want of ſuch a previous Care, as he was therefore deſirous ſhould now be taken, for the better and more perfect Eſtabliſhment of it. It was viſible to all the Nation, that the more moderate Diſſenters were generally ſo well ſatisfied with that Stand which our Divines had made againſt Popery, and the many unanſwerable Treatiſes they had publiſh'd in Confutation of it, as to expreſs an unuſual Readineſs to come in to us. And it was therefore thought worth the while, when they were deliberating about thoſe other Matters, to conſider at the ſame time what might be done to gain them, without doing any Prejudice to ourſelves.

The Scheme was laid out, and the ſeveral Parts of it were committed, not only with the Approbation, but by the Direction of that Great Prelate, to ſuch of our Divines as were thought the moſt proper to be intruſted with it. His Grace took one Part to Himſelf: Another was committed to the then Pious and Reverend † Dean, afterwards a Biſhop, of our Church. The reviewing of the daily Service of our Liturgy, and the Communion-Book, was referr'd to a ſelect Number of excellent Perſons, ** two of which are at this time upon our Bench: and I am ſure will bear Witneſs to the Truth of my Relation. The Deſign was, in ſhort, this: To improve, and, if poſſible, to enforce our Diſcipline; to review,

† Dr. *Patrick*, Biſhop of *Ely*.
** The Archbiſhop of *York* and Biſhop of *Ely*.

and

and enlarge our Liturgy; by correcting of ſome things, by adding of others; and if it ſhould be thought adviſable by Authority, when this Matter ſhould come to be legally conſider'd, firſt in Convocation, then in Parliament, by leaving ſome few Ceremonies, confeſs'd to be indifferent in their Natures, as indifferent in their Uſage, ſo as not to be neceſſarily obſerv'd by thoſe who made a Scruple of them; till they ſhould be able to overcome either their Weakneſſes or Prejudices, and be willing to comply with them.

How far this good Deſign was not only known to, but approved of by, the other Fathers of our Church, that famous Petition, for which Seven of them were ſent to the *Tower*, and which contributed ſo much to our Deliverance, may ſuffice to ſhew. The '*Willingneſs there declared of* '*coming to ſuch a Temper as ſhould be thought fit* '*with the Diſſenters, when that Matter ſhould* '*be conſider'd, and ſettled, in Parliament and* '*Convocation*;' manifeſtly referr'd to what was then known to ſeveral, if not all of the Subſcribers, to have been at that very time under Deliberation. And that nothing more was intended than I have before ſaid, is as evident from what was publickly declared in a Treatiſe purpoſely written to recommend the Deſign, when it was brought before the two Houſes of Parliament, in the beginning of the late Reign; and Licenſed by the Authority of a Noble Peer, now preſent, who was at that time Secretary of State: In the very Beginning of which there is this remarkable Paſſage, which I ſhall beg leave to read to your Lordſhips: ** '*No Alteration, that I* '*know of, is intended, but in things declared to* '*be alterable by the Church itſelf. And if Things* '*alterable be altered upon the Grounds of Pru-*

** A Letter to a Member of Parliament in favour of the Bill for uniting Proteſtants. Licenſed by the Command of the Earl of *Shrewsbury*, *April* 1. 1689. *Ja. Vernon.* Pag. 2.

dence

'*dence and Charity*; *and Things defective be* '*ſupplied*; *and Things abuſed be reſtored to their* '*proper Uſe*; *and Things of a more than ordi-* '*nary Compoſition, reviſed and improved*; *whilſt* '*the* Doctrine, Government *and* Worſhip *of the* '*Church remain intire, in all the ſubſtantial* '*parts of them*; *we have all Reaſon to believe* '*that this will be ſo far from injuring the* '*Church, that, on the contrary, it ſhall receive a* '*very great Benefit by it.*'

And now, my Lords, let any impartial Perſon conſider, what was there in ſuch a Deſign that could be juſtly eſteem'd prejudicial to the Conſtitution of our Church? Wherein would our Canons have ſuffer'd, if thoſe already made, had been more ſtrongly enforced; and ſome new ones had been added, for the Reformation of Manners; for the better puniſhing of notorious Offenders; and to render our publick Diſcipline more ſtrict, and ſevere? This we have been wiſhing for, ever ſince the Reformation. What harm would it have done our Church had it now been effected? Or how would our excellent Liturgy have been the worſe, if a few more doubtful Expreſſions had been changed for plainer and clearer; and a Paſſage or two, which however capable of a juſt Defenſe, yet in many Caſes ſeem harſh to ſome even of our own Communion, had either been wholly left at Liberty, in ſuch Caſes, to be omitted altogether; or been ſo qualified as to remove all Exception againſt them in any Caſe. If ſuch Collects, as are not yet adapted to the Feſtivals, or Goſpels, to which they belong, had been made more full, and appoſite to both; if ſome of the occaſional Offices had been enlarged, and new ones added: If, for Example, there had been a greater variety of Prayers, Pſalms, and Leſſons appointed by Authority, inſtead of the Compoſitions of private Perſons, now neceſſarily to be uſed, for the Viſitation of the Sick; and new Forms compoſed for the Uſe of Priſoners for Debt or Crimes?

Crimes? For the greater Solemnity of receiving Proſelytes into our Church; of reconciling Penitents to it; and of caſting notorious Offenders out of it. Theſe were ſome of the main things that were then deſign'd. As for any Favour to the Diſſenters, none, that I know of, was intended, but what ſhould have been entirely conſiſtent with our own Conſtitution: And I hope it will not be thought any Crime for the Biſhops, and Clergy of our Church, to be willing to enlarge its Communion, by any Methods which may be likely to gain others, and yet not injure our own Eſtabliſhment. Page 661.

No ſooner were their late Majeſties, of glorious Memory, ſeated in their Thrones, but this Deſign was openly eſpouſed by them. A Commiſſion was iſſued out, under the Great Seal of *England*, to a large Number of Biſhops and other eminent Divines, to meet together, and to conſider of theſe Matters. What they did, having not had the Honour to be one of them, I ſhall not preſume to ſay. This we know, that whatever they did, it was to have been carried on from them to the two Convocations of *Canterbury* and *York*: And after it ſhould have paſs'd their Approbations, it was finally to have been laid before the two Houſes of Parliament, and ſo to have gone on to the Royal Aſſent. This, my Lords, was the Courſe thro' which all that was deſigned, or ſhould have been done in this matter, muſt have paſs'd; and I am perſuaded nothing very injurious to our Church's Welfare, will ever be able to paſs thro' all theſe.

Having thus given your Lordſhips a true Account of that Deſign which Dr. *Sacheverell* mentions under the Name of Comprehenſion, I doubt not but that your Lordſhips will now be amazed to hear, what a falſe and ſcandalous Report he has made of it. In the 16th Page of his Sermon, he thus ſpeaks of it: '*The worſt* '*Adverſaries of our Church*, he ſays, *were to be*

'*let*

'*let into her Bowels under the Holy Umbrage of* '*Sons*; *who neither* believed *her* Faith; own'd '*her* Miſſion; ſubmitted *to her* Diſcipline; *or* 'complied *with her* Liturgy. *For the admitting* '*of this* Trojan *Horſe, big with Arms and Ruin* '*into our Holy City, the ſtraight Gate was to be* '*laid quite open*; *her Walls and Encloſures to be* '*pull'd down*; *and a High road made in upon* '*her Communion. Her Articles to be taught* '*the Confuſion of all Senſes, Nations, and Lan-* '*guages.*'

This, my Lords, is a very ſtrange Repreſentation of ſo good a Deſign, as that I before recounted to your Lordſhips. Yet this Repreſentation did this bold Man, as confidently, as falſly, make of it in the Houſe of God, and publiſh to the View of the whole Nation. For thus he goes on: '*This pious Deſign of making our Houſe* '*of Prayer a Den of Thieves, of reforming our* '*Church into a Chaos, is well known to have been* '*attempted ſeveral times in this Kingdom, and* 'lately within our Memory; *when all Things* '*ſeem'd to favour it, but that good Providence* '*which ſo happily interpoſed againſt the Ruin of* '*our Church, and blaſted the long projected* '*Scheme of* theſe Eccleſiaſtical *Achitophels.*' To ſay nothing more of the Deſign itſelf, of which I have given an Account before; pray, my Lords, who were the *Achitophels* that projected it, and muſt have concurr'd to the Execution of? I have already named the firſt, and chiefeſt of them, the late Archbiſhop *Sancroft*. The next who openly approved of it, were the Commiſſioners who met upon it in the *Jeruſalem-Chamber*: A Set of Men, than which this Church was never, at any one time, bleſs'd with either wiſer or better ſince it was a Church: * Who it was that preſided in the Convocation of this Province, to which this Project was next to be referr'd; and who,

* The Lord Biſhop of *London*.

had

had it gone on, muſt have had a chief Hand in the Management of it, I need not ſay. Every one who knows any thing at all of his Character, (and I am ſure your Lordſhips are none of you Strangers to it) knows him to be too good a Friend to the Eſtabliſhment of our Church, to have been capable of being engaged in ſuch a villainous Deſign, as Dr. *Sacheverell* pretends, for the Subverſion of it. Or had he been otherwiſe yet ſtill the major Part of that venerable Body muſt have been as great *Achitophels* as himſelf, or no Harm could have been done by him. Pardon me, my Lords, if the Courſe of my Argument obliges me to riſe yet one Degree higher, and to ſay, that the like Majority of your Lordſhips, and of the Houſe of Commons, together with his late Majeſty, muſt all have come into the Plot againſt the Church; or all the Skill and Malice of the inferior *Achitophels*, would have ſignified nothing. And what Cenſure that Man deſerves who has the Confidence to inſinuate to the World, that the Biſhops, the other Clergy, the Convocations, the Parliament, nay, and the late King himſelf, our Glorious Deliverer; or at leaſt the greater part of all theſe, were engaged in a Project '*ſo monſtrous, ſo romantic, and abſurd*, (for here I am content to uſe his own Expreſſions) *that it is hard to ſay whether it had more of Villany, or Folly, in it*,' I ſhall ſubmit it to your Lordſhips to conſider. All I deſign in taking Notice of this part of his Sermon, is only to clear the Memory of many excellent Perſons who are dead; and to vindicate the Reputation of ſome ſtill living, and in the higheſt Stations of the Church, from that Load of Infamy which this raſh Man has with ſo much Virulence of Speech caſt upon them: And to let your Lordſhips ſee that nothing was intended in all that Affair but what was both Honourable to thoſe who engaged in it, and I am perſuaded would have been for the Intereſt and Peace of our Church and State, had it been accompliſh'd.

I come now to that which is the proper Subject of the preſent Debate; namely, to offer ſuch Paſſages to your Lordſhips, as I humbly conceive do plainly and fully make out the Second Article of the Commons Impeachment againſt the Preacher; and prove him to have ſpoken with more Freedom than he ought, not only of the Diſſenters themſelves, but of the Toleration, (or as he had rather we ſhould call it) the Indulgence granted by Law to them.

Page 662. And here, as I remember, it was not deny'd either by his Counſel or himſelf, but that he had ſpoken, and ſpoken with Warmth too, againſt Toleration. The only Queſtion is, What the Toleration is againſt which he ſpake? Whether it was that which has been granted by Law to the Diſſenters? Or whether it was only againſt a general Toleration of Atheiſts, Deiſts, Socinians, Men of no Principles, perhaps of no Religion? Or at moſt againſt ſuch of the Diſſenters as abus'd the Indulgence granted them by Law; and made uſe of it to Purpoſes not at all warranted by it? The former of theſe the Commons charge upon him: The latter he pretends; the better to clear himſelf of their Charge.

To determine this Point, I muſt in the firſt place beg leave to obſerve, that among the ſeveral ſorts of falſe Brethren, enumerated by the Preacher with relation to God, Religion, or the Church: the ſecond kind is of thoſe, who give up any Point of the Church's Diſcipline and Worſhip, *Page* 8. To this he adds, that thoſe are falſe Brethren who defend Toleration, and Liberty of Conſcience. And that we may the better know what Toleration and Liberty of Conſcience he means, he ſpecifies the very Perſons to whom he refers, and of whom he ſpeaks; the Diſſenters: ' *If, ſays he, to comply with the* ' *Diſſenters both in publick and private Affairs,* ' *as Perſons of tender Conſcience and Piety, to* ' *promote their Intereſts in Elections, to ſpeak to* ' *them for Places and Preferment, to defend To-*

leration

'*leration and Liberty of Conſcience, and under* '*the pretence of Moderation, excuſe their Sepa-* '*ration are the* Criterions *of a true Church-Man:* '*God deliver us all from ſuch falſe Brethren.*' The Toleration therefore, and Liberty of Conſcience, againſt which he ſpeaks, muſt neceſſarily be that of the Diſſenters; thoſe who ſeparate from our Church: He names no others; but carries the ſame Perſons thro' his whole Sentence, both before and after thoſe Expreſſions. Either therefore it is no Reflection upon the Act of Indulgence to ſay that all thoſe who defend the Toleration of the Diſſenters, and are for allowing Liberty of Conſcience to them, are falſe Brethren with relation to God, Religion or the Church, *Pag.* 6, 7, and ſuch againſt whom we ought to pray to God to deliver us all, *Pag.* 8: Or if this cannot with any Reaſon be either ſaid, or ſuppoſed, then it muſt remain that Dr. *Sacheverell* has here ſaid what the Commons charge him withal; and that in expreſs Terms, *viz.* That he is a falſe Brother who defends the Toleration, not of Deiſts, Socinians, and I know not what Monſters of Irreligion, but of the Diſſenters: Thoſe ſame Diſſenters who by the Act of Indulgence have a Right to that Liberty of Conſcience of which this Gentleman ſpeaks ſo very hardly; and prays God to defend us from all ſuch falſe Brethren as ſhall preſume to excuſe it.

But not to inſiſt upon a ſingle Paſſage which may be ſuppoſed to have dropt unwarily from him: In the ſecond Part of his Sermon, he proceeds to ſhew the great Perils and Miſchiefs of thoſe falſe Brethren, againſt whom he was before ſpeaking, both to the Church and State, *Page* 15. And that theſe again are the ſame Perſons who have a Right to the legal Indulgence, is ſo very clear, that I do not ſee how it is poſſible for any one to make the leaſt doubt of it. *Page* 18. He deſcribes them as Occaſional Conformiſts to the Church. *Page* 19. As thoſe who had the old Leaven of their Forefathers ſtill working

working in them: And, in the next Sentence, he expreſly talks of the religious Liberty which our gracious Sovereign has indulged them. This in the very ſame Sentence he calls their Toleration; (for the Doctor himſelf is not tied up to any Niceties of Expreſſion; he may call it ſo, tho' others may not:) Theſe are the Perſons, and the only Perſons, of whom he ſpeaks in all that part of his Diſcourſe; let us ſee what he ſays of the Indulgence granted by Law to them.

And firſt, he tells us, *Page* 18. '*That it cannot be deny'd, but that tho' they do ſubmit to the Government, their Obedience is forced, and conſtrain'd; and ſo treacherous and uncertain, as never to be truſted. That they are as much Occaſional Loyaliſts to the State, as they are Occaſional Conformiſts to the Church; and will betray either whenever it is in their Power, and they think it for their Advantage. That nothing but a* ſottiſh *Infatuation can ſo far blind our Eyes and our Judgments, as to make us believe that the ſame Cauſes ſhould not produce the ſame Effects; that the ſame Latitudinarian and Republican Notions ſhould not bring forth the ſame rebellious and pernicious Conſequences. That we ſhall be convinced to our Sorrow, if we don't apprehend that the old Leaven of their Forefathers is ſtill working in the preſent Generation; and that this traditional Poiſon ſtill remains in this brood of Vipers to ſting us to Death. That they have advanced themſelves from the religious Liberty which our gracious Sovereign has indulged them, to claim a Civil Right; and to juſtle the Church out of her Eſtabliſhment, by hoiſting their Toleration into its Place. That to convince us what alone will ſatisfy them, they inſolently demand the Repeal of the Corporation and Teſt Acts, which under her Majeſty, is the only Security the Church has to depend upon: And which (if we may believe him) they have ſo far eluded by their abominable*

'*abominable Hypocriſy, as to have undermin'd* '*her Foundations, and indanger the Government,* '*by filling it with its profeſſed Enemies.*' His Meaning is plainly this; that the Diſſenters, whom we are ſo fooliſh as to indulge, are a parcel of falſe and treacherous Perſons; Enemies both to our Church and State; and ſuch as, if not timely ſuppreſs'd, will convince us to our Sorrow of the Weakneſs and Folly of taking ſuch Vipers into our Boſom, as watch only for a fair Opportunity to ſting us to Death.

But what then muſt we do to ſecure ourſelves againſt theſe dangerous Enemies? Why firſt, the Doctor aſſures us, that they are never to be gain'd by any Favour that can be ſhew'd to them. '**That he muſt be very weak, or ſomething* '*worſe, that thinks, or pretends, that the* Diſ-'ſenters (for of theſe he ſtill ſpeaks) *are to* '*be won over by any other* Grants *and* Indul-'gences *than giving up our* whole Conſtitu-'tion.' This ſhews the Folly of trying the ſoft Way of Indulgence with them: And therefore he concludes, That '*He who recedes the leaſt Tittle* '*from it (our Conſtitution) to ſatisfy, or ingra-*'*tiate with theſe clamorous, inſatiable, Church-*'*devouring Malignants, knows not what Spirit* '*they are of*; *or he ought to ſhew who is the true* '*Member of our Church.*'

This I think comes fully up to what is objected againſt him; namely, that Dr. *Sacheverell* does in his Sermon ſuggeſt and maintain, '*That the* '*Toleration granted by Law is unreaſonable, and* '*the Allowance of it unwarrantable:*' For ſo it needs muſt be, if the Diſſenters be ſuch Men as he tells us they are; and will be ſatisfy'd with nothing leſs, than he aſſures us they will. And yet what next follows, is, if poſſible, ſtill more expreſs to the ſame purpoſe. It is objected a- Page 663.

* Serm. p. 19.

gainſt him, by the Commons, that he had affirm'd in his Sermon, That '*Queen* Elizabeth *was de-*
'*luded by Archbiſhop* Grindall (*whom he ſcurri-*
'*louſly calls a* falſe Son of the Church, *and a*
'perfidious Prelate) *to the Toleration of the* Ge-
'nevian *Diſcipline.*' The Fact is not denied; but the Expreſſions are excus'd, and the Truth of the Allegation is endeavoured to be made out by Hiſtorical Memoirs: And it is hoped that your Lordſhips will not account it a High Crime and Miſdemeanour, to have ſpoken too hardly of a Prelate who has been ſo many Years in his Grave.

I am, my Lords, very far from thinking, that the Commons ever intended to charge Dr. *Sacheverell* as guilty of High Crimes and Miſdemeanours, for ſpeaking ſcandalouſly of that good Archbiſhop. Their Concern was not for his Perſon, what Reſpect ſoever they may have had (as all true Friends of the Reformation muſt needs have a very great one) for his Memory. But the Truth of the matter is this: The Preacher complains Page 19 of his Sermon, that *Queen* Elizabeth *was deluded by Archbiſhop* Grindall, *to the Toleration of the* Genevian *Diſcipline.* He adds, '*That the Archbiſhop was a perfidious*
'*Prelate, for deluding her to tolerate that Diſci-*
'*pline. That ſhe found it ſuch a headſtrong and*
'*encroaching Monſter, that in eight Years ſhe*
'*ſaw it would endanger the Monarchy as well as*
'*the Hierarchy: And like a Queen of true Re-*
'*ſolution, and pious Zeal for both, ſhe pronounc'd*
'*that ſuch were the reſtleſs Spirits of that fac-*
'*tious People* *, *that no Quiet was to be ex-*
'*pected from them, till they were* Utterly Sup-
'preſs'd. *That this therefore like a prudent*
'*Princeſs, ſhe did by wholeſome Severities; and*
'*the Effect was, that by this Means the Crown*

* *Sermon, Page* 20.

for

'*for many Years ſate eaſy and flouriſhing on her* '*Head: But that her Succeſſor, King* James, '*did not follow her wiſe Politicks.*' And the Reſult was as deplorable on his ſide, as it had been glorious on hers; For by this Means, '*His* '*Son fell a Martyr to their Fury; his unhappy* '*Offſpring ſuffer'd ſuch diſaſtrous Calamities,* '*as made the Royal Family one continued Sacri-*'*fice to their Malice.*' And all this for want of thoſe wholeſome Severities which the wiſe Queen his Predeceſſor had uſed utterly to ſuppreſs that factious People.

This, my Lords, is the Doctor's Narrative, and I have given it you in his own Words. The Application is plain and home. The Diſſenters are now again tolerated, as they were heretofore under Queen *Elizabeth*. There is a perfidious Prelate (perhaps in his Opinion a great many, who, like Archbiſhop *Grindall*, help to delude another Queen, into the Toleration of them. Theſe *Eight Years* paſt (for the very Number of Years is remarkable) her Majeſty has borne the reſtleſs Spirits of this factious People; and had no Quiet for them. It is now high time for her to alter her Meaſures, as Queen *Elizabeth* wiſely did. It is the only way to make the Crown ſit eaſy and flouriſhing upon her Head. And if this be not plainly to ſpeak out what he would have done with the Act of Indulgence, I muſt deſpair of ever being able to know any Man's Meaning by his Expreſſions. Such Examples are not only the moſt likely to enforce, but the moſt proper and lively Methods to convey a Man's Senſe, even to the dulleſt Capacity; and make him clearly perceive if not what he ought, yet I am ſure what the Preacher would have him to do.

I have, my Lords, inſiſted the longer upon this Part of the Doctor's Sermon, becauſe I would not willingly fall under the Cenſure of picking out diſjointed Sentences, and putting them together from diſtant Places, that ſo I might the bet- Page 664.

ter draw a Senſe out of them contrary to his Meaning. I ſhall trouble your Lordſhips but with one part more of it, to the ſame Effect, *Page* 24, 25. where he comes to conſider, *What ſhould be the Reſult of his long Diſcourſe?* I ſhall read it to your Lordſhips in his own Words, *Page* 25. ‘ *Let us therefore*, ſays he, *as we are* ‘ *unhappy Sharers of St.* Paul's *Misfortune, to* ‘ *have our Church in Perils amongſt falſe Bre-* ‘ *thren, follow his Example and Conduct in a* ‘ *parallel Caſe. He tells us in his Epiſtle to the* ‘ Galatians, c. 2. *That he was obſtructed, and* ‘ *peſter'd in preaching the Goſpel, by* Falſe Bre- ‘ thren unawares brought in, who came privily to ‘ ſpy out his Liberty which he had in Chriſt ‘ Jeſus, that they might bring him into Bondage. ‘ To whom he gave place by Subjection, no not ‘ for an Hour, that the Truth of the Goſpel ‘ might continue with the Church. *Doubtleſs* ‘ *this brave and bold Reſolution did the Apoſtle* ‘ *take by the peculiār Command and Inſpiration of* ‘ *the Holy Ghoſt: And yet if our* Diſſenters *had* ‘ *liv'd in thoſe times, they would have branded* ‘ *him as an intemperate, hot, furious Zealot,* ‘ *that wanted to be ſweetned by the gentle Spirit* ‘ *of Charity and Moderation forſooth.*’

Here we have again the Perſons of whom the Preacher ſpeaks: They are *our Diſſenters*, not the Deiſts, Atheiſts, Socinians, Hypocrites, of our times. And accordingly what follows, plainly refers to them: For thus he goes on, ‘ *Schiſm* ‘ *and Faction are things of impudent and in-* ‘ *croaching Natures; take Permiſſions for Power;* ‘ *and advance a* Toleration (for ſo the Doctor is ‘ ſtill at Liberty to call what we muſt ſtile *Indul-* ‘ *gence) immediately into an Eſtabliſhment.*’ Your Lordſhips will pleaſe to obſerve, by the Way, that this was the very thing he had before ſaid of theſe ſame Perſons, *Page* 19. and thereby plainly ſhews, that he ſpeaks in both Places of thoſe *Diſſenters* who have a Right to the *Toleration* or *Indulgence*, granted by Law to Proteſtant Diſſenters.

Diſſenters. Let us now hear what he would have done with them. Why he would have them '*treated like growing Miſchiefs, or infectious* '*Plagues; kept at a diſtance, leaſt the deadly* '*Contagion ſpread.*' And the Method he propoſes in order thereunto, is this, '*Let us there-*'*fore*, ſays he, *have no Fellowſhip with* theſe 'Works *of Darkneſs; but rather reprove them.*' Theſe Works, *Schiſm* and *Faction*; for of theſe, and theſe only, he here ſpeaks, This is the Peoples Part, and the inferior Paſtors: '*As for the* '*ſuperior Paſtors, let them do their Duty, in* '*thundring out their Eccleſiaſtical Anathema's* '*againſt them.*' Againſt whom, my Lords? what Works of Darkneſs? Still the ſame he beforemention'd: *Our Diſſenters*, thoſe are the Perſons: Their Schiſm and Faction; thoſe are the Works of Darkneſs to which he refers. '*And* '*let any Power on Earth dare reverſe a Sen-*'*tence ratify'd in Heaven.*'

This, my Lords, was the laſt part of the Commons Impeachment upon this ſecond Article: And 'tis ſo plainly expreſs'd by the Preacher in this Paſſage, that I confeſs it amazes me to conſider with what Poſitiveneſs he has thought fit to deny that any ſuch thing was meant by him. The Perſons whom the ſuperior Paſtors are ſummoned to anathematize, are the ſame with thoſe, whom the other Paſtors and People are to have no Fellowſhip withal, but to reprove. Theſe, by the neceſſary Connexion of his Diſcourſe, are our Diſſenters; whoſe Works of Darkneſs, he ſtates to be Schiſm and Faction: Thoſe Diſſenters to whom the Government had granted a Toleration; as himſelf, in the ſame Paſſage, takes Notice. Which being ſo; I ſhall leave the Doctor to deny and proteſt, as he pleaſes; but when all is done, his own Words will riſe up againſt him, and appear to every impartial Perſon ſo plain, and poſitive, as to put it beyond the Power of any artificial Interpretation to perplex the Meaning of them.

And this lets us into the true Application of thoſe Paſſages of Scripture, with which he concludes his whole Diſcourſe. In which, having ſhewn the Danger of our Church from theſe falſe Brethren, and exhorted his Auditory to a ſteady Courage and Reſolution in the Defence of it; he thus at once both inforces his Doctrine, and abuſes his Adverſaries. That tho' the Church (for to that he applies, what * *Zachariah* ſpake of the falſe Prophets that ſeduced the People) *lies bleeding of the Wounds ſhe has received in the Houſe of her Friends*: A Paſſage firſt thrown at my † ſelf, for defending the Prince's Authority, when ſome of theſe very Men engaged as vehemently on the ſide of Liberty, againſt the Rights of the Crown, as they now pretend to ſtand up vigorouſly for it: ** *Tho' the Ways of* Zion *may mourn for a Time* (ſo the Doctor gloſſes upon the Text) *and her Gates be deſolate; her Prieſts ſigh, and ſhe in bitterneſs, becauſe* (it is the Preacher's Reaſon, the Text has no ſuch Word) *Her Adverſaries are chief*; he means in the Adminiſtration under her Majeſty; *and her Enemies at preſent proſper*; (ſo he again improves the Text; in hopes, I ſuppoſe, that it will not be long before he ſhall have preach'd them out of their Places:)†† *Tho' among all her Lovers ſhe has few*, (the Prophet complained that *Jeruſalem* had none) *to comfort her*; *and many* (*Jeremiah* ſaid all) *have dealt treacherouſly with her, and are become her Enemies*; (he refers to thoſe of whom he had before ſpoken, *Page* 22.) *** *Tho' there are few to guide her among all the Sons which ſhe hath brought forth; neither are there many to take her by the Hand of all the Sons that ſhe hath brought up*; (*Iſaiah* in both places, ſays

Page 665.

* Zech. xiii. 6.

† See Dr. *Atterbury*'s Rights of an *Engliſh* Convocation; Title Page.

** Lament. i. 4, 5.

†† Lament. i. 2.

*** Iſaiah li. 18.

none :)

none:) *Tho' her Enemies cry, down with her, down with her, even to the Ground:* That is, in other Words, tho' (the Preacher, and a few of his Friends, excepted) both the Fathers and Paſtors of the Church; and the Men who are at preſent in Power, and Authority, in the State, are become falſe Brethren, and run in with thoſe Enemies of the Church, our Diſſenters, againſt it; '*Yet there is a God that can, and will raiſe* '*her up, if we forſake her not.*'

It were an eaſy Matter to make many proper Remarks upon theſe Paſſages of Scripture, thus applied, or rather abuſed, by the Preacher: But that would be beſides my preſent Buſineſs; and will fall in more properly under the laſt Article of this Impeachment. It is enough that I have, I hope, fully ſhewn your Lordſhips how Dr. *Sacheverell* has treated if not the Indulgence itſelf, yet I am ſure, thoſe who are intitled to the Benefit of it: And who, if they ſhall have the Misfortune, by this kind of Preaching, to be once generally thought ſuch wicked, falſe, and dangerous Enemies to our Church and State as they are here repreſented, I cannot think that their Indulgence will hold long. If they have Numbers to ſecure them, it is well for them: But otherwiſe I am ſure as the Caſe is here ſtated, it muſt be our Wiſdom, as well as Duty, to ſuppreſs them.

How criminal ſuch an Invective as this will be accounted in the Eye of the Law, I dare not preſume to ſuggeſt: Much leſs ſhall I pretend to intimate what Cenſure it may deſerve. Somewhat I think ſhould be done to put a Stop to ſuch Preaching, as if not timely corrected may kindle ſuch Heats and Animoſities among us, as may truely endanger both our Church and State. As for the Preacher himſelf, I am very willing to come into any Meaſures of Favour to him, that are conſiſtent with your Lordſhips Honour and Juſtice, and will anſwer the Ends of the

Impeachment that has been brought before us againſt him.

The Biſhop of Norwich's *Speech in the Houſe of Lords, at the opening of the Second Article of Impeachment againſt Dr.* Sacheverell.

My Lords,

I Am very ſenſible under what Diſadvantage in the Opinion of many, a Biſhop muſt ſpeak againſt a Clergyman that ſtands accus'd of Crimes committed by him in the ſeeming Execution of his Office; eſpecially after having been ſo publickly required to be an Advocate as well as a Judge. And I am the more ſenſible of this Prejudice lying againſt me, for having been ſo lately called into that Order, and for being ſo unworthy of it.

But I think my ſelf obliged notwithſtanding, under all theſe Diſadvantages, to deliver not only my Judgment, but alſo the Reaſons that determine me to it: Which I ſhall do as plainly as I can; with that Deference to your Lordſhips, which I am ſure it muſt upon all Occaſions particularly become me to pay; and at the ſame time with that Freedom which I think the Importance of this Cauſe does at this time require.

Dr. *Sacheverell* ſtands impeach'd by the Commons of *Great-Britain*, of High Crimes and Miſdemeanors expreſſed in the ſeveral Articles of the Charge exhibited againſt him: And your Lordſhips have heard what they have ſaid in ſupport of that Charge, as well as what has been offer'd in the Doctor's Defence.

Your Lordſhips have alſo debated among your ſelves the Merits of the Cauſe as to the firſt of theſe Articles; and have come to a Reſolution, that the Commons have made good that part of their Charge: In which Reſolution as I did heartily concur; ſo I was ready to have humbly repreſented to your Lordſhips my Reaſons for ſo doing, had there been either room or occaſion for it.

Your

Your Lordſhips are now upon the *Second Article*; wherein the Doctor is charged for *ſuggeſting and maintaining that the Toleration granted by Law is unreaſonable, and the Allowance of it, unwarrantable*; with other Particulars that have immediate relation to this general Charge, and which are indeed ſo many Proofs of it.

In this View therefore, my Lords, I beg leave to conſider them: And the *Firſt* of theſe Inſtances in Support of this Charge, is, that he aſſerts that *He is a falſe Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience:* And this, my Lords, the Doctor does aſſert in ſo many Words. It is *one* of the *many* Marks he gives whereby we may diſcern who is a falſe Brother in thoſe Reſpects; not a *ſmall Part* of *one general Mark*, as was alledg'd very inconcluſively, I think, in his Defence. For if it was to be granted, (tho' it cannot be fairly pretended) that the Doctor makes the defending of Toleration and Liberty of Conſcience, one Branch only of the Character of a falſe Brother; I do not ſee how it cou'd make even a part of that Character, if there was no falſe Brotherhood in it. And I ſhall not trouble myſelf or your Lordſhips with going about to ſettle the degrees of falſe Brotherhood that are in this part of the Character, becauſe I think every degree of it is unreaſonable, and not to be warranted.

And therefore the Doctor cannot make it ſo much as a part of the Character of a falſe Brother to defend Toleration and Liberty of Conſcience, as it is confeſs'd that he does, but he muſt at the ſame time *ſuggeſt and maintain that the Toleration is unreaſonable, and the Allowance of it unwarrantable.* For it can never be any degree of falſe Brotherhood, to defend what is reaſonable and warrantable: Nor wou'd even the Doctor, as inconſiſtent a Man as ſeveral of the Noble Lords that have ſpoken for him repreſent him to be, ever have made it one; if he had not himſelf

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himſelf condemn'd that which he blames others for defending.

The *Second Inſtance* alledg'd is, that *he calls Archbiſhop* Grindal *a falſe Son of the Church, and a perfidious Prelate, for deluding Queen* Elizabeth *into the Toleration of the* Genevian *Diſcipline.* I ſhall not, my Lords, go about to add any thing to the full and juſt Vindication you have heard of that excellent Prelate. But can any of your Lordſhips believe, that a Presbyter of the *Church* of *England*, profeſſing more than ordinary Zeal for Epiſcopacy and the Conſtitution of this Church, ſhould beſtow ſuch Language on one who was the firſt Biſhop and the Ornament of it ſo long; only for diſpoſing that glorious Queen to a mild Treatment of the Puritans of that Time, which is the utmoſt that is pretended to be laid to his Charge, if he had thought Toleration a reaſonable Thing, or what was fit to be eſtabliſhed by Law?

This, my Lords, I confeſs can never enter into my Thoughts, as ready as I am to enlarge them for the admitting of any favourable Conſtruction that will not ſhut out common Senſe.

The *Third Inſtance is his making it the Duty of the Superior Paſtors to thunder out their Eccleſiaſtical Anathema's againſt Perſons intitled to the Benefits of the Toleration.* And to ſhew that he has done this, I need only refer your Lordſhips to that part of his Sermon where the Superior Paſtors are call'd upon to do ſo; (*viz.*) the Fourth and laſt General Head, where he draws the Conſequence of all that he had ſpoken before, in the following Words. * ‘ Now what ‘ ſhould be the Reſult of this long Diſcourſe, ‘ but that if we bear any true Concern for the In-

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* Vide *Serm.* p. 22. l. 4.

‘ tereſt

‘tereſt, Honour, and Safety of our Church and ‘Government, we ought ſtedfaſtly to adhere to ‘thoſe Fundamental Principles, upon which both ‘are founded, and upon which their Security un‘der God alone depends; and conſequently that ‘it highly behoves us, cautiouſly to watch againſt, ‘to mark, and avoid all thoſe that thus treache‘rouſly deſert them. And indeed it would be both ‘for our Advantage, as well as their Credit, if ‘ſuch Men would throw off the Mask, entirely ‘quit our Church of which they are no True ‘Members, and not fraudulently eat her Bread, ‘and lay wait for her Ruin, purloin her Revenues, ‘and ungratefully lift up their Heels againſt Her. ‘For then we ſhould be one Fold under one Shep‘herd; all thoſe invidious Diſtinctions, that now ‘diſtract and confound us, loſt; and we ſhould be ‘terrible like an Army of Banners to our Ene‘mies; who could never break in upon ſuch an ‘uniform and well compacted Body. This indeed ‘would be a True Peace, and Solid Union, when ‘we ſhould all with one Mind and one Mouth ‘glorify God, and not with a confus'd diverſity ‘of contradictious Opinions, and inconſiſtent Jar‘gon of Worſhip, which the God of Peace, Purity, ‘and Order cannot but abhor. As it is a ‘Maxim in Politicks, that all Governments are ‘beſt ſupported by the ſame Methods and Councils ‘upon which they are founded; ſo it will appear ‘undeniably true in its Application to our Con‘ſtitution, which can be maintain'd by no other ‘Principles, but thoſe on which it is built, and ‘like their Baſis, the Goſpel, if there's any Vio‘lation, or Breach made in any Branch of it, it ‘ſhakes and endangers the whole Frame and ‘Body. Theſe things, however little they may ‘be repreſented by our Adverſaries, will be ‘found of the moſt conſiderable Conſequence. ‘Let us therefore, as we are unhappy Sharers ‘of St. *Paul*'s Misfortune, to have our Church ‘in Perils among falſe Brethren, follow his Ex‘ample and Conduct in a parallel Caſe. He tells

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'us in his Epiſtle to the *Gallatians*, c. 2. That 'he was obſtructed and peſter'd in his preach-'ing the Goſpel, by *falſe Brethren*, unawares 'brought in, who came privily to ſpy out his 'Liberty, which he had in Chriſt Jeſus, that 'they might bring him into Bondage: To whom 'he gave place by Subjection, no not for an 'Hour, that the Truth of the Goſpel might 'continue with the Church. Doubtleſs this brave 'and bold Reſolution did the Apoſtle take by the 'peculiar Command and Inſpiration of the Holy 'Ghoſt; and yet if our *Diſſenters* had liv'd 'in thoſe Times, they would have branded 'him, as an Intemperate, hot, furious Zealot, 'that wanted to be ſweeten'd by the gentle Spi-'rit of Charity and Moderation forſooth. Schiſm 'and Faction are Things of impudent and in-'croaching Natures; they thrive upon Conceſ-'ſions, take Permiſſion for Power, and advance a 'Toleration immediately into an Eſtabliſhment. 'And are therefore to be treated like growing 'Miſchiefs, or infectious Plagues, kept at a 'Diſtance, leſt their deadly Contagion ſpreads. 'Let us therefore have no Fellowſhip with 'thoſe Works of Darkneſs, but rather reprove 'them. Let our ſuperior Paſtors do their Duty 'in thundering out their Eccleſiaſtical Ana-'themas, and let any Power on Earth dare re-'verſe a Sentence ratify'd in Heaven.'

Can any Thing, my Lords, be plainer than that the Diſſenters, and they only, are here ſpo-ken of? And what does the Doctor ſay in his own Defence to avoid it? his Words in his printed Speech are theſe:

'Schiſmaticks, my Lords, are not the only Per-'ſons againſt whom Eccleſiaſtical Cenſures may 'be denounced. The Works of Darkneſs which 'I referr'd to as fit to be reproved, in that part 'of my Sermon where I ſpeak of theſe Cen-'ſures, are of the ſame kind with thoſe men-'tioned by the Apoſtle, whoſe Words I produc'd. 'All lew'd and immoral Practices, &c.

It is very true, my Lords, Schiſmaticks are not the only Perſons againſt whom Eccleſiaſtical Cenſures may be denounced, but I muſt ſtill ſay they are the only Perſons referr'd to, in the Paragraph I have read to your Lordſhips; and therefore I own I am a good deal concern'd to find the Doctor making ſo vain, ſo unſincere a Defence. For it is Works of Darkneſs in general he is cautioning againſt, but expreſly, by a Word of his own inſerting, not the Apoſtle's, thoſe Works of Darkneſs mentioned immediately before; Schiſm and Faction, which with him go always together,

Theſe are the Sins againſt which he calls upon his Superior Paſtors to thunder out their Eccleſiaſtical Anathemas; nor can the Charge be avoided by that Diſtinction which was offer'd in his behalf, between a Cenſure purely Spiritual, and an Eccleſiaſtical Cenſure. For admitting there is Ground for that Diſtinction in a Scholaſtical Conſideration of the general Queſtion of Chriſtian Cenſures; yet there is no room to make uſe of it in this Caſe, becauſe he calls expreſly for Eccleſiaſtical Anathemas, which can be apply'd to none but ſuch as are part of the Order and Diſcipline of this Church. Page 667.

And it is certain, my Lords, that theſe Cenſures cannot, ſince the Act of Toleration, be inflicted upon Diſſenters how much ſoever their Schiſm remains; becauſe it is expreſly provided by an Act of Parliament, (an Act, my Lords, of the whole Chriſtian Society, to which the Superior Paſtors were perſonally concurring) that they ſhall not be treated as Schiſmaticks in the Way of thoſe Eccleſiaſtical Cenſures, to which their Separation would otherwiſe have certainly ſubjected them.

And tho' I cannot undertake upon Memory to be very particular, yet I dare venture to ſay, there have antiently been Relaxations of the Diſcipline of the Church, even when the Crime was thought to deſerve the Continuance of it, for Publick Expedience, and better preſerving the Peace

Peace of the Chriſtian World: And that in ſuch Caſes any Presbyter or Biſhop wou'd himſelf have been cenſured, if he had not acquieſced in ſuch Relaxations.

My Lords, a Presbyter of the Church of *England*, is the more obliged to acquieſce in all ſuch Relaxations amongſt us as are legally made, becauſe he has ſolemnly promiſed at his Ordination, that *he will give his Faithful Diligence always ſo to miniſter the Doctrine, and Sacraments, and the Diſcipline of Chriſt, as the Lord hath commanded, and as this Church and Realm hath receiv'd the ſame.*

I have already obſerv'd to your Lordſhips, how the Diſcipline of the Church ſtands at preſent, as to the Point in queſtion. And as the Relaxation of it in that particular, was agreeable to that Temper which the Biſhops who petitioned King *James*, gave the Diſſenters ground to expect: So I am verily perſuaded that the Church is ſo far from having been hurt by this Indulgence, that it has receiv'd Advantage as well as Credit, from that Moderation which gave way to it. I could give ſeveral Inſtances of this within my own Obſervation, while I was Arch-deacon, under a Reverend Prelate that ſits now before me, and ſince I have had the Honour to be on this Bench: In which Compaſs of Time ſeveral Men of Sobriety and Learning, bred up to be Miniſters amongſt the Diſſenters, have left the Separation, and upon due Trial have been admitted to Orders in our Church; in which they have officiated with intire Conformity to our Rules, and to the Honour of our Holy Religion.

Theſe Inſtances have been ſo frequent and remarkable, ſince the Diſſenters have been exempted from the Penalties of certain Laws, above what had been obſerv'd before; that I think it very ill becomes any Clergyman to preach againſt that Exemption, as the Doctor (notwithſtanding his Reſerve

Reſerve for Conſciences truly ſcrupulous) has done; and to call upon his Superiors to act in Contradiction to it. He ſhould have forbore doing this, at leaſt out of Regard to her Majeſty, who had been graciouſly pleaſed to declare from the Throne, that ſhe would preſerve the Toleration inviolable: A Reſolution I ſhall ever think it my Duty upon all proper Occaſions to expreſs my Approbation of, as Juſt and Wiſe and Charitable, and every way agreeable to the Spirit and Genius of the Chriſtian Religion.

I ſhall not, my Lords, enter into the Enquiry of what Sentences are ratified in Heaven; but as one may venture to ſay, that all that have been pronounced on Earth, are not ratified there: So by all I have ſeen of the Doctor's Spirit in theſe Matters, I have great Reaſon to fear, that if the Power of the Keys were in his Hands, it would often be very ſadly abuſed.

However, he has ſo good an Opinion of his own Spirit, as to put his Superiors in mind of another Part of their Duty, immediately after that I have mentioned; and that is, to promote Men of Probity, Conſcience and Courage, without which he thinks they cannot be fit Members of the Church Militant; in which I can as little agree with him as in the former Demand. For if I may judge of the Probity, Conſcience, and Courage he thinks ſo deſerving, by what appears in his Sermon, compar'd with his Speech to your Lordſhips; I cannot think them Qualifications for a Miniſter of the Church of Chriſt in any Reſpect; and I hope I ſhall be ſo happy as to find all the Reverend Prelates, with whom I have the Honour to ſit, agreeing with me in this.

But tho' I hope ſuch a Conduct will never recommend any Perſon to Favour; yet I do not deſire that even that which I heartily blame ſhould be puniſhed ſo much as I think it deſerves. And tho' he, who pleads ſo warmly for wholeſome Severities towards thoſe who differ from him, has

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the leaſt Title to your Lordſhip's Compaſſion; yet I hope he will find it, as far as the juſt Concern you have for the Publick Tranquility will allow you to ſhew it.

This I ſay from that which, I bleſs God, is the natural Temper of my Mind, and not from the Care that has been taken by ſome to intimidate, as far as they could, thoſe who were to have the Cognizance of the Doctor's Cauſe, and were not thought to be favourable to it.

I ſhall not take upon me to charge the Doctor or any of his particular Friends with this Practice, as great a Temptation as one is under to do ſo from ſeveral Circumſtances. And it is not the leaſt, that occurs in his Prayers, which he has publiſhed upon this Occaſion, to repreſent not ſo much to God as to the World, that he is under Perſecution, when he is proſecuted for offending againſt the Law by thoſe who in common Juſtice ought to be thought the faireſt Accuſers; and before your Lordſhips, who are juſtly acknowledged to be the moſt impartial Judges.

However I will never believe, till I cannot avoid it, that any Members of the Church of *England* who have ackowledged the Government, much leſs any Clergyman who has ſo often profeſs'd his Obedience to it in Church and State, ſhou'd have been any Way acceſſary to thoſe Threatnings that have been given out, particularly againſt ſuch Biſhops as ſhould happen to condemn the Doctor's Proceedings.

Page 668. What, my Lords, I have ſeen of this Cauſe, is, that I am likely to be one of thoſe Biſhops; and tho' I do not pretend to any great Share of Courage, I am very free to declare, that I am in no Apprehenſion of what may befal myſelf for condemning this Perſon, as I am of what will probably befal the Publick, if your Lordſhips ſhould not condemn him.

But that is in your Lordſhips Judgment, to which I humbly ſubmit it: But think the Commons have made Good the Second Part of their Charge.

PROCEEDINGS *upon the Impeachment againſt* JAMES *Earl of* Derwentwater, WILLIAM *Lord* Widdrington, WILLIAM *Earl of* Nithiſdale, ROBERT *Earl of* Carnwath, WILLIAM *Viſcount* Kenmure, *and* WILLIAM *Lord* Nairn, *in* Weſtminſter-Hall, *on* Thurſday *the* 9th *of* February, 1715.

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TWO Things ſeem to have contributed to the Inſurrection, for which theſe Lords were impeach'd and try'd: The one was the diſmiſſing the Duke of *Ormond*, the Lord Viſcount *Bolingbroke*, the Earl of *Marr*, and other great Men, in the Adminiſtration, from their Employments a little abruptly on the Acceſſion of King GEORGE I. And the other, the appointing a Secret Committee of the Commons, to enquire into the Conduct of the late Queen's Miniſters; who impriſoned ſome of them, and charged others with Treaſonable Practices to defeat the *Hannover* Succeſſion. It was much expected that ſomething of this Nature wou'd have appear'd in the Tryals of theſe Noblemen, from ſome Speeches made in the Houſe, and even from the Preamble to the Articles; but People are pretty well able, by this Time, to judge of the Truth of thoſe Suggeſtions; and whether they were not principally propagated and encouraged to prevent ſome Gentlemen being reſtor'd to their Poſts and the Royal Favour, and to eſtabliſh another Set of Men. The Lord Viſcount *Bolingbroke*, Secretary of State in the late Reign, obſerving a Storm ariſing againſt the late Miniſtry, went over to *France* about the 26th of *March*, 1715. On the 10th of *June* following, Mr. *Walpole*, Chairman of the Secret Committee, mov'd to impeach the

Some Occaſions of the Inſurrection, for which theſe Lords were Impeach'd.

Lord Viſcount *Bolingbroke* of High Treaſon, and the Lord *Coningsby* mov'd to impeach the Earl of *Oxford* in like manner; which Impeachments were agreed to; and the Commons, on the 17th of the ſame Month, ordered Mr. *Prior*, who was one of the Plenipotentiaries at the Treaty of *Utretcht*, into cloſe Cuſtody, and that no Body ſhou'd be admitted to ſee him.

On the 19th of *June* the Commons impeach'd the Duke of *Ormond* of High Treaſon; and the Earl of *Strafford*, another of the Plenipotentiaries, of High Crimes and Miſdemeanors; (but was not proceeded againſt:) Whereupon the Duke of *Ormond* withdrew, and went over to *France*; but the Earl of *Oxford* was committed to the *Tower*, and afterwards tried, but came off with Honour.

On the 1ſt of *Auguſt* the Earl of *Marr*, Secretary of State in the late Reign, retir'd from Court; and about the Middle of the ſame Month aſſembled the Friends of the Pretender in *Scotland*, and formed an Army; among whom were the Earl of *Nithiſdale*, the Lord *Kenmure*, and other of the Impeach'd Lords.

On the 20th of *Auguſt* an Act paſs'd for the Attainder of *Henry* Lord Viſcount *Bolingbroke*, and another for the Attainder of *James* Duke of *Ormond*, of High Treaſon.

The Earl of *Marr* on the 3d of *September* proclaim'd the Pretender at *Aboyn*, in *Aberdeenſhire*, by the Name of *James* VIII.

Mr. *Forſter*, who had accepted the Poſt of the Pretender's General in *England*, aſſembled a Body of Malecontents in *Northumberland* on the 6th of *September*.

About the 19th of *October* the Lord Viſcount *Kenmure*, the Earls of *Nithiſdale*, *Carnwath*, and *Wintown*, join'd Mr. *Forſter* with about Two hundred Horſe from *Scotland*; and on the 24th of the ſame Month, Brigadier *Mackintoſh* join'd Mr. *Forſter* with a Body of Scotiſh Foot about ten Miles from *Berwick:* Their whole Number was computed to be 2500 when they march'd into *Lancaſhire*; but I don't find they were more than 1500 after the Engagement

gagement with the King's Forces. As to their ſeveral Marches and Counter-Marches, till their Surrender at *Preſton*, on the 14th of *November*, theſe will be ſeen in the enſuing Evidence. *

How

* The following Biſhops, to ſhew their Loyalty, publiſh'd the following Declaration, *viz.*

A DECLARATION *of the* Archbiſhop *of* Canterbury, *and the* Biſhops *in and near* London, *teſtifying their Abhorrence of the preſent Rebellion; with an Exhortation to the Clergy and People under their Care, to be Zealous in the Diſcharge of their Duties to his Majeſty King* GEORGE.

WHEREAS an Unnatural Rebellion has been raiſed againſt Our Lawful and Rightful Sovereign King GEORGE in ſeveral Parts of the Kingdom, and is ſtill Threatned in more, We have thought it incumbent upon Us, out of Our Duty to God, to Our King, to Our Country, and to Our Holy Religion, in this Publick Manner to Declare Our Abhorrence of it, and to warn both the Clergy and People under Our Charge, of the great Obligations they lie under, upon all theſe Accounts, to ſhew a hearty and an open Zeal for the Government in this Conjuncture.

The Providence of God has, indeed, ſo wonderfully appeared hitherto, both in timely Diſcovering the Treaſon, and in Diſappointing Our Enemies of ſeveral Advantages they expected, that We have great Reaſon to truſt in Him, that the Event will be to the Confuſion of the Wicked Actors in this Rebellion: But, however, in a Matter of this High Nature, wherein Our Duty and Our deareſt Intereſts are ſo deeply concerned, no Endeavours ought to be thought ſuperfluous, nor Zeal unneceſſary.

We are the more concerned, that both the Clergy and People of Our Communion ſhould ſhew themſelves hearty Friends to the Government upon this Occaſion, to vindicate the Honour of the Church of *England*, becauſe the chief Hopes of Our Enemies ſeem to ariſe from Diſcontents artificially raiſed among Us, and becauſe ſome, who have valued themſelves, and have been too much valued by others, for a pretended Zeal for the Church, have joined with Papiſts in theſe Wicked Attempts; which as they muſt ruin the Church if they ſucceed, ſo they cannot well end without great Reproach to it, if the reſt of Us do not clearly and heartily Declare Our Deteſtation of ſuch Practices.

We are not ſurprized, that Papiſts ſhould riſe up againſt a Government which they would never yet own, and endeavour to ſet a Perſon upon the Throne, who will Eſtabliſh their Religion, and Ruin Ours, (tho' Rebellion is but an ill Return for the Quiet They have enjoy'd.) But that profeſs'd Members of the Church of *England* ſhould join with them in this, and out of Private Diſcontents, Attempt to ſet up a Perſon whom they have ſo often and ſo lately Abjured, is ſo vile and deteſtable a Thing, as may juſtly make them odious both to God and Man; but at the ſame Time, to pretend a Zeal for the Church, that is, to join with Papiſts to ſet up a Popiſh Pretender, to ſupport the Church of *England*, is ſuch an

The Parliament was not ſitting at this Time, as the Folio Edition mentions.

How the Editors of the *Folio* Edition came to ſay that the Parliament was ſitting at that Time, I can't conceive, becauſe they did not meet till the 9th of *January*

Impoſition upon the common Senſe of Mankind, that nothing, even in Popery it ſelf, can be more abſurd and nothing but an Infatuation from God, juſtly inflicted for Our Sins, can ſuffer to paſs upon the Nation.

How much Blood this may coſt, or what Ruin it may bring on Our Country, God only knows; but we think proper to obſerve to you, that the more clearly and openly We Declare Our ſelves for the Government, the leſs it will probably be: And that all thoſe muſt have a Share in the Guilt of the Innocent Blood that ſhall be ſpilt, not only who actually join in the Rebellion, but who do any way promote it, or, even by their Silence at this Juncture, ſhall give Hopes to the Pretender and his Friends, and juſt Cauſe of Jealouſy and Suſpicion to the Government.

And is this a Time to ſtand Neuters, when all lies at Stake? or is Popery become ſo innocent of late, that it is indifferent whether a Popiſh or a Proteſtant Prince be on the Throne? This We ſpeak to thoſe who have owned the King's Title, and have ſworn to Maintain it, and are ready to do it again, as Occaſion offers; who, We have Reaſon to believe, are ſo many, that if they are true to their Oaths, the Government (humanly ſpeaking) cannot be in any Danger. And is it not fit for all ſuch Perſons to conſider ſeriouſly what thoſe Oaths are, with which they have bound their Souls? They have not only Abjured the Pretender, and his Title; but have Sworn to Defend King GEORGE to the utmoſt of their Power, againſt all Traiterous Conſpiracies and Attempts whatſoever, which ſhall be made againſt His Perſon, Crown, or Dignity; and to the utmoſt of their Power to Maintain and Defend the Succeſſion of the Crown againſt the ſaid Pretender, and all other Perſons whatſoever.

Theſe Words do not only import, that We will not Rebel againſt the King; but that We will be Active for Him according to Our ſeveral Stations, eſpecially in Times of Danger, when Rebellions are raiſed againſt Him: They who are called to be Soldiers, by Fighting couragiouſly for Him; They who are Magiſtrates, by uſing their Authority for His Support; They who are Miniſters, by their Prayers, by their Preaching, and by their Admoniſhing thoſe under their Care, of their Duty to Him; and all of Us, by a cheerful Ready Declaration of Our Reſolution to ſtand by Him.

Such a Conduct would diſcourage the Rebels, and Animate the Government; would put an End to Our Troubles, and Support His Majeſty in the juſt Poſſeſſion of the Crown, which was ſettled upon His Family with very Mature Conſideration, and for Juſt and Weighty Reaſons, as being the next Family of the Royal Blood that were Proteſtants; from whom only We could expect Protection in Our Religious and Civil Liberties, which are the Birthright of the People of *England*, and which no Man has a Right to invade. This Settlement was eſtabliſhed by the whole Legiſlature,

January afterwards, the very Day theſe Lords were impeached: On the 10th, the Lords were brought from the *Tower* to the Bar of the Houſe of Peers,

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ſtature, and Confirm'd by many Acts of Parliament, made in Two different Reigns, and under the Prevalency of each of the Unhappy Diviſions of Parties among Us; ſeveral of them, in the laſt Years of Our late Gracious Queen, and has been, from Time to Time, Sworn to by almoſt all of all Orders and Degrees of Men among Us.

As this Settlement was made for the Security and Benefit of theſe Kingdoms, ſo have We all the Reaſon in the World to think Our ſelves Happy in that Perſon, who, by all this Authority, at preſent Reigns over Us. Even His Enemies are forced to confeſs, that He is a very Good and Gracious Prince: He lives in the Conſtant Communion of the Church of *England*, and has given Us both His Oath and His repeated Royal Word to Protect it; and He has not, by any Thing He has done, given Us the leaſt Reaſon to to ſuſpect, but that it will Flouriſh, at leaſt, as much under His Government, as under that of the beſt of His Royal Predeceſſors.

But if the Pretender ſhould prevail, what can the Church of *England* expect, but Ruin and Deſtruction? A Popiſh Prince upon the Throne, bigotted to his Religion, and heated with what will then be called Ill Uſage, together with a long Train of Papiſts in the Succeſſion, can bode nothing but Fatal and Irrecoverable Ruin to it. May not We in this Matter appeal to the Experience of all Countries, whether a Succeſſion of Popiſh Princes have not Ruined the Proteſtant Religion wherever it has been Planted. They are obliged by the Laws of their Church to extirpate out of their Dominions what they call Hereſy, which their Canoniſts treat as a Crime more heinous than either Murder or Rebellion. And theſe Laws they never fail to put in Execution, when they have full Power to do it; as We may be ſatisfied from what was done in *Flanders*, where, according to the Account of Writers of that Communion, above Fifty thouſand were put to the moſt miſerable Deaths.

To paſs over the Maſſacres and horrible Perſecutions in *France*, *Savoy*, and other Foreign Countries, let Us call to mind how much this Church and Nation ſuffered in the Bloody, tho' ſhort Reign of Queen *Mary*, contrary to Solemn Promiſes; when not only many were put to Death as Hereticks Convict, but the Torture was ordered for all whom They ſuſpected, and who wou'd not Confeſs, according to the Barbarity of the Inquiſition; which Horrid Court, or ſomething very like it, wou'd probably have been ſet up in this Kingdom, had that Popiſh Reign laſted but a little longer: And We have Reaſon to fear it wou'd effectually be eſtabliſhed here, if ever God, for Our Sins, ſhou'd ſuffer another Popiſh Prince to be Settled on this Throne.

The Progreſs that was made toward the bringing this Yoke of Bondage upon Us, and the Miſeries with which we were Threatned under the late unhappy King *James*, are too freſh in Our Thoughts to be forgotten: And what befel that Unfortunate Prince, will certainly be Remembred and Reſented by him who claims an Indefeaſable Right to his Kingdoms.

Peers, and the Articles of Impeachment being read to them, they were allowed to the *Monday* following to put in their ſeveral Anſwers. Afterwards the

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But beſides this, how muſt the Pretender look upon the Clergy of the Church of *England*, after all that they have been doing for near thirty Years together? They were the Clergy, that in the Time of King *James* did juſtly alarm the Nation with the Dangers of Popery; from whence followed all that was done at the Revolution. And the Clergy have every Year ſince that, upon the Fifth of *November*, given God Thanks for what was then done, *for making all Oppoſition fall before Him*, [the Prince of *Orange*,] *till he became Our King*. They have not only taken all the Oaths eſtabliſhed by Law, but have uſed the daily Prayers, and thoſe of the ſeveral Faſts and Thankſgivings, for the Proſperity of the Government. They have frequently, from Time to Time, in their Addreſſes from the Convocation, and from their reſpective Dioceſes, promiſed to ſtand by the Proteſtant Succeſſion. How muſt the Pretender look upon Perſons, that have done all this? That have Prayed againſt Him, that have Addreſſed againſt Him, that have Sworn againſt Him, and Abjured Him for ſo many Years together?

What a Reproach will this Matter then be to the Church of *England?* Such of Us as ſtand true to Our Oaths, will then be called Rebels and Traitors; and ſuch as do not, (if any ſhall be ſo Wicked,) will be called Athieſts and Infidels, for taking Abominable Oaths againſt their Conſciences. What Scandal will this give to Our People? and how will they be apt to turn Papiſts in great Numbers, when We, that ſhould direct and ſtand by them, ſhall fall under ſuch Reproaches? But We hope better, tho' We thus Speak; and that God will not ſuffer thoſe ſore Judgments to come upon Us and Our Country.

We do therefore, in the Name of God, call upon all thoſe who are under our Care, in the firſt place, to humble themſelves before God, for the great and crying Sins of the Nation; for that Spirit of Infidelity and Libertiniſm; of Unthankfulneſs for the Mercies of the Goſpel; of Formality and Hypocriſy; of Strife and Envy; of Hatred and Animoſity, which are ſo rife among Us, and which are generally the Forerunners of the Deſtruction of any People. Let Us all cry mightily to God, to avert theſe Judgments, which We have ſo juſtly deſerved; that He would *Save His People*, ſo often and ſo wonderfully preſerved by Him, *and not give his Heritage to Reproach*; that he would not ſuffer this Church to be Over-run with Superſtition and Idolatry, or leave us to the Mercies of them, *whoſe Mercies are cruel*. Let Us particularly Pray for the Preſervation of the Perſon and Government of Our moſt Gracious Sovereign King GEORGE, that God would cover his Enemies with Shame; *but that upon Himſelf* and His Poſterity, *the Crown may ever Flouriſh*. We do alſo Charge both Clergy and People, as they will be Anſwerable for the Deſtruction that may otherwiſe come both upon the Church and Nation, that They endeavour to ſtrengthen the Hands of the Government in this Dangerous Conjuncture: The Clergy by plainly Admoniſhing their Flocks of their Duty, both to

their

the Time was enlarged to the 19th, when they were all brought to the Lords Bar, and pleaded guilty, except the Earl of *Winton*, who obtained further Time to put in his Anſwer. Six of the Lords plead Guilty.

The Editors of the *Folio*, having introduced theſe Proceedings, with a Speech, ſaid to be made by Mr. *Lechmere* in the Houſe of Commons, on the 9th of *January*, which, they tell us, induced that Houſe to carry up theſe Impeachments, I ſhall here give an Abſtract of it.

Mr. *Lechmere's* Speech in the Houſe of Commons, on theſe Impeachments, the 9th of *Jan.* 1715.

" He ſaid, Their greateſt Concern was to put an " End to the Rebellion: And to that End they " ought to ſtrengthen the King's Hands, ſo as to " enable him ſpeedly to complete that Work; and " that with the greateſt Chearfulneſs, from the Ex- " perience they had of his Majeſty's Wiſdom and " Juſtice, who would make no other Uſe of the " Confidence the Parliament repoſed in him, than " to promote the Welfare of his People; and that " whatever extraordinary Aſſiſtance the preſent Junc- " ture of Affairs might require, *they would be conti-* " *nued no longer than the publick Neceſſity called for:* " That the next Step was *the National Juſtice*; which, Vol. vi. p. 2. " as diſagreeable as it might be, when the Enemy's " Deſign was become ſo deſperate and avowed, as " to ſtrike at the Crown upon the King's Head, and " involve the Nation in a Civil War, they could " not exert themſelves with too much Vigour. The " Spirit

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their King and Country; and the People by a Cheerful Declaration of their Readineſs to ſtand by the Government. And let all of Us, forgetting all Differences and Animoſities, make this the great Contention, who ſhall act with the trueſt Zeal againſt the Common Enemy.

And God grant that We may All, in this Our Day, ſee the Things that belong to Our Peace, before they are hid from Our Eyes.

Novemb. 3. 1715.

Tho. Cantuar'
Joh. London.
Jonathan Wincheſter.
Jo. Lichfield & Cov.
Ric. Peterborough.
W. Sarum.
Jo. Bangor,
W. Lincoln.
C. Norwich.
W. Ely.
Tho. Chicheſter.
Rich. Gloceſter.
John Aſaph.
Jo. Oxon.

" Spirit which would be ſhewn in this Inſtance " would animate their Friends; and the Terror it " would ſtrike in their Enemies, would contribute " as much to their Safety, as any other Preparation " that had or could be made. He wiſh'd he could " ſay, that this Rebellion was the Project of thoſe " only that appeared at the Head of it; that it was " the Work only of Papiſts, or of thoſe few Pro- " teſtants who were wicked or weak enough open- " ly to join in it; or that it was but a Plot of Yeſ- " terday: For he thought it was a Plot of many " Years Labour; the neceſſary Conſequence of the " Meaſures that had been carried on for ſome Years " paſt. To frame a right Judgment of this Rebel- " lion, it was neceſſary to conſider the natural Ten- " dency of the publick Proceedings of late Years, " and the Connection they bore with the preſent un- " fortunate State of Things, when Men in ſacred " Functions became State Inſtruments, and their " great Merit was under Pretence of aſſerting the " Doctrines of the Church of *England*, to condemn " the Revolution thereby, and undermine the Pro- " teſtant Succeſſion: Theſe Practiſes had contribu- " ted a great deal to the preſent Calamity; for as " the Deſigns of the Enemy grew more avowed, " much Induſtry was uſed to inculcate the Notion " of Heredetary Right, in Oppoſition to the Settle- " ment of the Houſe of *Hanover* by Parliament: " Thoſe who made their Court beſt to Men in " Power, were ſuch who eſpouſed this Opinion in " the moſt notorious Manner: With what Ten- " derneſs was a Divine of the Church of *England* " [Mr. *Bedford*] treated for the moſt impudent Li- " bel, [*The Hereditary Right aſſerted,*] that ever was " publiſhed againſt any Government, that had either " Will or Power to maintain itſelf? Though the Pu- " niſhment inflicted on that Gentleman was light " enough, an Order from the Government was pro- " cured, counterſign'd by a Secretary of State to " the Judges of the *Queen's-Bench*, to ſupercede the " ignominious Part of the Sentence, on Account of " the ſacred Function of the Criminal; which might " be interpreted a Licence and Protection from the

" Go-

" Government to Men in Holy Orders, to propa-
" gate that deſtructive Poſition with Impunity. And
" what Severities were at the ſame Time exerciſed
" on thoſe who had Courage enough to aſſert the
" Intereſt of their Country, and the Proteſtant Suc-
" ceſſion? what Diſtinctions were made to elude
" the Oaths made for the Security of the Govern-
" ment? what Endeavours were uſed to poſſeſs
" People with *falſe Fears of the Danger of the Church*?
" what little Care was taken to inſtill into the Youth
" of this Kingdom ſuch Principles as were conſiſ-
" tent with the true Intereſts either of the Church or
" State? Theſe Things he looked upon to be the
" Foundation of the Scheme which was by this Re-
" bellion carrying on into Execution. The Diſſa-
" tisfaction and Uneaſineſs that were created by
" them in the Minds of the People, made Way for
" the Change that was deſired. Another Part of the
" Scheme, was to diſable, as far as they could, thoſe
" Perſons who had been moſt remarkable for ſup-
" porting the *Hanover* Succeſſion. The great Ef-
" fort was made at that *Great Man*, [*the Duke of*
" Marlborough, *to whom he gives that Title four*
" *Times in the Compaſs of half a Dozen Lines*,] who
" was not only the Honour and Ornament of
" his Country, but the Glory of the Age: Many
" who heard him, remembered the Part he took in
" Vindication of that *Great Man*, while his Cha-
" racter was under Debate in that Houſe: He could Vol. vi. p. 3.
" not forget the Rage with which he was puniſhed;
" or how much Streſs was laid on obtaining the Cen-
" ſures of Parliament upon him. And though the
" Aſperſions thrown upon him, did not hurt that
" *Great Man*, yet this was a very neceſſary Step to
" put him out of the Way, whoſe very Name and
" Appearance would have been ſufficient to raiſe
" Armies in favour of the Proteſtant Succeſſion.
" And he thought it a Reproach to the Kingdom,
" that thoſe groundleſs Aſperſions caſt upon him,
" ſhould remain upon the Journals of Parliament.
" Another great Lord, [Lord Viſcount *Townſhend*,]
" who was inſtrumental in procuring the Treaty of
" Barrier and Succeſſion, fell under the Violence

" of

" of thoſe Times, and was proſecuted with uncom-
" mon Fury. He [*Lechmere*] had ſome Share in
" juſtifying this *Great Man* in that Houſe, when he
" was voted *an Enemy to his Country*; and it was
" not the Barrier, but the Services he had done the
" Proteſtant Succeſſion, that drew that Rage upon
" him. Two other Honourable Gentlemen, [Mr.
" *Stanhope* and Mr. *Walpole*,] who ſat near him,
" had felt the Severity of thoſe Times, occaſioned
" by their diſtinguiſhed Zeal and Firmneſs for the
" true Intereſt of their Country: That the Name
" of that General, [the Duke of *Ormond*,] for whoſe
" immediate Service the *Great Man* firſt mentioned
" was blemiſhed, was become the Reproach of his
" Family and Country, by avowing the Service of
" the Pretender; and they might e'er long ſee him at
" the Head of an Expedition for eſtabliſhing Popery
" and arbitrary Power. That the Secretary of State
" [the Lord Viſcount *Bolingbroke*,] who diſtinguiſh-
" ed himſelf in the Purſuit of the other *Great Lord*,
" had ſufficiently explain'd his Deſigns; and the next
" News they expected to hear, was, that he had ta-
" ken upon him the Character of a Miniſter to the
" Pretender. He looked upon diſabling the great
" Aſſertors of the Proteſtant Intereſt, to be no ſmall
" Part of the Scheme: And, in the mean Time,
" their Tools were carrying on their Work below
" Stairs, [*Weſtminſter-Hall*,] and wronging thoſe
" who appeared Favourers of the *Hanover* Succeſ-
" ſion. Charters of Corporations were attacked in
" an unprecedented Manner, and no Stone left un-
" turned to ſtrengthen them in that Reſpect. But the
" Maſter-Strokes of this grand Scheme were yet be-
" hind: The ſureſt Way to deſtroy a Government,
" has been always thought to be by its own Hands,
" that is, *by the Power and Authority of Parliament*;
" [This the Orator's Enemies, as well as his Friends,
" will readily ſubſcribe to:] Whereupon a Confe-
" deracy, by which the Liberties of *Europe* had been
" long ſuſtained, was broke to Pieces by Votes ob-
" tained in that Houſe, in a moſt extraordinary Man-
" ner: The Honour of the Nation, the Ballance of
" Power, and the Proteſtant Intereſt, were given up

" by

" by a Peace, which reſtored *France* to its ancient
" formidable State: We were upon the Point of
" giving up the whole Trade of the Nation to the
" *French* King, who could make no ſuitable Re-
" turn, but by beſtowing on us a Pretender bred up
" in his own Faith and Politicks; which nothing
" could have obſtructed, but the many *miraculous*
" *Providences* that followed, [known only to this
" great Orator and his Friends; for there never was
" the leaſt Appearance of a Plot or Deſign to de-
" feat the *Hanover* Succeſſion till the late Queen's
" Miniſter's were brought in Danger of their Lives.]
" The King's providential Acceſſion to the Throne
" diſappointed the immediate Execution of the
" Scheme, and quieted the Spirit of thoſe Men
" [meaning the late Miniſtry] for a Time; [though
" if they ever had any Deſign of bringing in the Pre-
" tender, they could never have met with a more
" favourable Opportunity than at the Queen's Death,
" when the whole Power of the Kingdom, both Ci-
" vil and Military, was in their Hands.] That the like
" Endeavours were uſed ſoon after his Majeſty's Ac-
" ceſſion, to create a Diſaffection againſt his Govern-
" ment, as had been before to prevent its taking place;
" and yet no one Inſtance had been aſſign'd through-
" out his Adminiſtration, that could offend any one
" but a *Jacobite*. His Majeſty had done more for
" the Honour of the Church, and the true Intereſt
" of the Kingdom, than any of his Predeceſſors in
" three Times the Number of Years; [ſome few
" Proofs of it would have done well here.] His
" perſonal Virtues, and the Wiſdom of his Govern-
" ment had retrieved the Honour and Reputation of
" his Kingdoms, that had been ſhamefully loſt; [this
" is another glorious Aſſertion, ſupported by the like
" Evidence as the former.] No Inſtance could be
" aſſign'd of Hardſhip or Oppreſſion to any one of
" his Subjects; or that could give a juſt Reaſon of
" Diſſatisfaction: [How was it poſſible there ſhould,
" under ſo able and uncorrupt a Miniſtry?] That Vol. vi. p. 4.
" from all theſe Conſiderations he ſhould make a
" right Judgment of the Nature of this Rebellion,
" whence its Riſe, how deep its Root, and to what

" Influences

" Influences it was owing. That the Part the Lord " *Derwentwater* and others had acted, was to be " conſidered as the firſt Symptoms of that general " Diſorder, for which ſo much Foundation was " laid; for which Reaſon they ought to conſider it " as the Cauſe of the Nation, and take it into their " own Hands, not truſting the Proſecution of it in " other Hands; for every one knew what Hazards " Proſecutions in the ordinary Courſe of Juſtice " were liable to; and how certain ſoever the Suc- " ceſs might be, it was obvious to every one, of what " different Weight and Influence the Proſecutions " of Parliament were, from thoſe in the ordinary " Forms: For here they engaged every Commoner " in *Great Britain* as an immediate Party, againſt " thoſe who had carried a War into the Bowels of " the Kingdom: That the Power of Impeachments " was the moſt valuable and uſeful Priviledge that " belonged to the Commons, at leaſt, equal to that " of giving Money: That they need not be appre- " henſive of any Intricacies in theſe Proceedings: " Impeachments were more plain, regular, and diſ- " intangled than any other Forms of Juſtice, and " particularly excepted out of the late Statute of Trea- " ſons, which had very much fetter'd the ordinary " Courſe of Proceedings: And he thought he could " maintain, *That no Pardon under the Great Seal* " *could diſcharge a Judgment obtained on an Impeach-* " *ment of the Commons.* [But here he ſeems to be " as much miſtaken as in ſome other Conceits, if we " may judge by the ſubſequent Practiſe.] He had " heard, indeed, of a very low Diſtinction that had " been coin'd without Doors, *(viz.) That the Par-* " *don is not pleadable in Bar of an Impeachment, to* " *prevent the Commons from examining the Offence;* " *but that it was pleadable after Judgment, and in* " *Bar of Execution.* And whenever that Queſtion " ſhould come properly before them, he would un- " dertake to ſhew the Idleneſs and Abſurdity of " that Diſtinction, which he did not apprehend " could be for the Advantage of the Crown, but the " contrary. [No ordinary Paradox.]

" If

" If they wanted any farther Motives to make " this Proſecution their own, he had a Paper in his " Hand, which would fire the Thoughts of every " Man there. It was the Pretender's Declaration, " that could not be read without the utmoſt In- " dignation, conſidering the perſonal Indignities in " it caſt upon the beſt of Princes. They could do " no leſs, therefore, than make themſelves the Pro- " ſecutors of thoſe who avow'd the Cauſe of the " Pretender, and ſet themſelves at the Head of Ar- " mies in the Heart of the King's Dominions: Here " they could ſee how he treated the Commons them- " ſelves, repreſenting them *as the moſt illegal and* " *infamous Aſſembly of Men that ever met toge-* " *ther*. Theſe Conſiderations ought to invigorate " their Proceedings; though he did not think that " Houſe ought to be govern'd by vindictive Conſi- " derations, but by ſuch Circumſtances only, as from " their real Weight and Conſequence called for the " Interpoſition of the Commons. He was ſenſible " the Commons had a great deal of Work upon " their Hands from other Impeachments, [thoſe " of the Earl of *Oxford*, Lord *Strafford*, &c.] " which they had entered upon; but the preſent " Situation and Conjuncture of Affairs, made it ne- " ceſſary to give a Preference to the Proſecution of " thoſe Lords who had been taken in open Rebel- " lion; And he did therefore impeach *James* Earl " of *Derwentwater*, of High-Treaſon; which Im- " peachment he undertook to make good." Vol. vi. p. 5.

Upon the like Motions it was reſolv'd to impeach *William* Lord *Widrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*.

Proceedings againſt *James* Earl of *Derwentwater*, &c. for High Treaſon.

On Thurſday the 9th of *February*, the Lords being come down from their Houſe to the Court erected in *Weſtminſter-Hall*, a Proclamation for Silence was made: After which his Majeſty's Commiſſion was read, all the Peers ſtanding uncovered.

The

The COMMISSION.

Georgius Rex,

The Commiſſion. *GEORGIUS Dei Gratia Magnæ Britanniæ Franciæ & Hiberniæ Rex, fidei Defenſor, &c. Prædilecto & fideli Conſiliario noſtro Willielmo Domino Cowper Cancellario noſtro Magnæ Britanniæ, Salutem. Cum Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Georgius Comes de Winton, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præſenti Parliamento per Milites, Cives, & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione per ipſos Jacobum Comitem de Derwentwater, Willielmum Dominum Widdrington, Willielmum Comitem de Nithiſdale, Georgium Comitem de Winton, Robertum Comitem de Carnwarth, Willielmum Vicecomitem Kenmure, & Willielmum Dominum Nairn, commiſ' & perpetrat' in nomine ipſorum Militum Civium & Burgenſium & nomine omnium Communium Regni noſtri Magnæ Britanniæ impetiti & accuſati exiſtunt; & ipſi predict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram nobis in præſenti Parliamento de Proditione prædict' ſe eſſe culpabiles ſeparatim cognoverunt: Nos conſiderantes quod Juſtitia eſt virtus excellens & altiſſimo complacens Volenteſq; quod prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Robertus Comes de Cornwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, de & pro Proditione unde ipſi ut præfertur impetit' accuſat' & convict' exiſtunt coram Nobis in præſenti Parliamento noſtro ſecundum Legem & Conſuetudinem hujus Regni noſtri Magnæ Britanniæ & ſecundum Conſuetudinem Parliamenti audiantur ſententientur & adjudicentur cæteraq; omnia quæ in hac parte pertinent debito modo exerceantur & exe-*

Vol. vi. p. 6.

& exequantur ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro aſſemblat' Nobis humilime ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac vice conſtituere dignaremur. Nos de fidelitate, prudentia, provida circumſpectione & induſtria veſtris plurimum confidentes Ordinavimus & Conſtituimus vos ex hac cauſa Seneſcallum Magnæ Britanniæ ad Officium illud cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmiſſa deligenter intendatis & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertin' & requirunter, hac vice faciotis, exerceatis & exequamini cum effectu. In cujus rei Teſtimonium has Literas, noſtras fieri fecimus Patentes, Teſte me ipſo apud Weſtm' nono die Februarii Anno Regni noſtri Secundo.

Per ipſum Regem propria Manu Signat'

WRIGHTE.

Then a Proclamation was made for the Lieutenant of the *Tower* to bring his Priſoners to the Bar: Whereupon *James* Earl of *Derwentwater*, and the reſt of the Lords above-named, were brought to the Bar, the Ax being carried before them with the Edge from them by the Gentleman Gaoler. The Priſoners after kneeling, bow'd to the Court: Which Complement the Court having returned, the Articles of Impeachment, which were carried up by Mr. *Lechmere*, were read.

ARTICLES *of Impeachment of High Treaſon exhibited by the* Commons *of* Great Britain *againſt* James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, George *Earl of* Winton, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn.

WHEREAS for many Years paſt a moſt wicked Deſign and Contrivance has been formed and carried on, to ſubvert the Ancient and Eſtabliſhed Government

Government, and the good Laws of theſe Kingdoms, to extirpate the true Proteſtant Religion therein eſtabliſhed, and to deſtroy its Profeſſors, and inſtead thereof to introduce and ſettle Popery and Arbitrary Power; in which unnatural and horrid Conſpiracy great Numbers of Perſons of different Degrees and Qualities have concerned themſelves and acted, and many Proteſtants, pretending an uncommon Zeal for the Church of *England*, have joined themſelves with profeſſed Papiſts, uniting their Endeavours to accompliſh and execute the aforeſaid wicked and traiterous Deſigns:

And whereas it pleaſed Almighty God in his good Providence, and in his great Mercy and Goodneſs to theſe Nations, to crown the unwearied Endeavours of his late Majeſty King *William* the Third, of ever-glorious-Memory, by making him the Inſtrument to procure the Settlement of the Crown of theſe Realms in the illuſtrious Houſe of *Hanover*, as the only Means, under God, to preſerve our Religion, Laws, and Liberties, and to ſecure the Proteſtant Intereſt of Europe; ſince which happy Eſtabliſhment the ſaid Conſpirators have been indefatigable in their Endeavours to deſtroy the ſame, and to make way for the vain and groundleſs Hopes of a ſpurious Impoſtor and Popiſh Pretender to the imperial Crown of theſe Realms:

And to accompliſh theſe Ends, the moſt immoral, irreligious, and unchriſtian-like Methods have been taken; but more particularly in the laſt Years of the Reign of the late Queen *Anne*, during which Time all imaginable Endeavours were uſed by the ſaid Conſpirators to prejudice the Minds of the Subjects of this Realm againſt the Legality and Juſtice of the ſaid Settlement of the Crown; and for that Purpoſe the holy Scriptures were wreſted, and the moſt wholeſome Doctrines of the Church of *England* perverted and abuſed by Men in holy Orders in the moſt publick and ſcandalous Manner, in order to condemn the Juſtice of the late happy Revolution, and thereby to ſap and undermine the Foundation of the ſaid happy Eſtabliſhment: And the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced

tenanced by particular Marks of publick Favour and Diſtinction; falſe and dangerous Notions, of a ſole hereditary Right to the imperial Crown of theſe Realms, were propagated and encouraged by Perſons in the higheſt Truſt and Employments; contrary to the ancient, undoubted, and eſtabliſhed Laws of theſe Kingdoms; jeſuitical and ſcandalous Diſtinctions were invented, and publickly inculcated, to enervate the Force and Obligation of thoſe Oaths which had been contrived in the plaineſt and ſtrongeſt Terms, by the Wiſdom of Parliament, for the Security of the ſaid Eſtabliſhment: And to conceal their Deſigns, and thereby the better to enable them to carry on the ſame, great Numbers of the ſaid Conſpirators, of all Ranks and Conditions, pretending a Zeal for the Proteſtant Succeſſion, openly and voluntarily took the ſaid Oaths: Groundleſs Fears of the Danger of the Church of *England* were fomented throughout theſe Kingdoms, to diſorder the Minds of well-diſpoſed Proteſtants. Vol. vi. p. 7.

By all which, and many other ſuch ungodly Practices of the ſaid Conſpirators, the moſt cauſeleſs and dangerous Jealouſies and Diſſatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Proteſtants, were much diſquieted.

But nevertheleſs, theſe diſhoneſt Methods were purſued by the ſaid Conſpirators with indefatigable Induſtry, as the only means to weaken the Foundations of the ſaid happy Eſtabliſhment.

And whereas the Diſſolution of the late glorious Confederacy againſt *France*, and the Loſs of the Ballance of Power in Europe, were further Steps neceſſary to compleat the Deſigns of the ſaid Conſpirators; and the ſame being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the proteſtant Succeſſion was thereby brought into the moſt imminent Danger; and by theſe, and other pernicious Meaſures, the Deſtruction ſo long intended by the ſaid Conſpirators for theſe poor Nations, ſeemed near at hand.

At which Time, and under which moſt deplorable Circumſtances, it pleaſed Almighty God in his infinite Wiſdom to call to himſelf the late Queen *Anne*; and by a Concurrence of many moſt won-

derful Providences, to give a quiet and peaceable Acceſſion to his preſent moſt gracious Majeſty to the Throne of his Anceſtors, to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject and good Proteſtant, as their only lawful and rightful Liege Lord. And altho' from the Moment his Majeſty aſcended the Throne to this Day, his Reign has been one Series of Wiſdom, Juſtice, and Clemency, his Labours conſtant, unwearied and ſucceſsful, to retrieve the Honour and Reputation of theſe Nations, to re-eſtabliſh the Trade and recover the Wealth of his Kingdoms; and altho' all imaginable Encouragement has been given to the Church of *England*, and all Tenderneſs ſhewn even to his Popiſh Subjects, and his conſtant Care has been to procure the univerſal Good of his People, nevertheleſs the ſaid Conſpirators have, by the moſt vile and impious Methods, renewed their Endeavours to throw theſe Kingdoms into the utmoſt Confuſion, and to entail endleſs Miſeries on us and our Poſterities: For theſe Ends, many of the abovementioned moſt wicked and dangerous Practices have been repeated with the utmoſt Induſtry and Inveteracy; to delude, diſorder, and corrupt the Minds of his Majeſty's good Subjects, the moſt groundleſs Jealouſies have been fomented againſt his wiſe and happy Adminiſtration; and in many Parts of his Kingdoms, the moſt unnatural, unexampled Riots and Tumults, by the ſecret and malicious Endeavours of the ſaid Conſpirators, have been procured, ſtirred up, and encouraged againſt his peaceable Proteſtant Subjects, under falſe Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and ſeduce them from their Allegiance, and prepare them for an open Rebellion.

And the ſaid Conſpirators, having at length reſolved to deprive theſe Nations of the invaluable Bleſſings which they now enjoy under the wiſe and gentle Reign of his preſent moſt Gracious Majeſty King *GEORGE*, and of the certain Proſpect of Happineſs which they have for their Poſterity in a Succeſſion of Princes derived from himſelf, did contrive, confederate, and reſolve to put their moſt malicious, wicked, and traiterous Deſigns into immediate

mediate Execution; for which Purpoſe, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, jun. the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Clavering*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townley* *Thomas Butler*, *Thomas Walton*, *Gabriel Haſket*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traitors to his preſent moſt ſacred Majeſty King *GEORGE*, the only lawful and undoubted Sovereign of theſe Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they, as good and faithful Subjects, owed to his ſaid Majeſty, did in or about the Months of *September*, *October*, or *November*, 1715. moſt wickedly, maliciouſly, falſly and traiterouſly imagine and compaſs the Death of his moſt ſacred Majeſty.

And for the accompliſhing and executing their ſaid traiterous Purpoſe, they the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traiterouſly agree, confederate, conſpire and reſolve, together with many other evil-diſpoſed Perſons, to raiſe, excite, and levy, within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County-Palatine of *Lancaſter*, and elſewhere within this Kingdom, a moſt cruel, bloody, and deſtructive War againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his royal State, Crown, and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble

in a warlike and traiterous Manner, in order to raiſe Tumults and Rebellion within this Kingdom; and having procured great Quantities of Arms, Ammunition, and warlike Inſtruments, at the Times and Places aforeſaid, or ſome of them, did form and compoſe, or did aſſiſt in the forming and compoſing an Army of Men, conſiſting of his Majeſty's Liege Subjects, in order to wage War againſt his ſaid Majeſty, for and in Behalf and in Favour of the ſaid Pretender to the Crown of theſe Realms; and
Vol. vi. p. 8. the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, at the Time and Times, and Places aforeſaid, and at divers other Times and Places within this Kingdom, did maliciouſly and traiterouſly make, levy, and raiſe War and Rebellion againſt his moſt ſacred Majeſty; and in a warlike and hoſtile Manner did march through and invade ſeveral Parts of this Kingdom, and did unlawfully take and ſeize the Horſes and other the Goods and Chattels of many of the peaceable and good Subjects of his Majeſty, and in other Places did take and ſeize from his Majeſty's faithful Subjects Guns, and other warlike Inſtruments, for the carrying on their traiterous Purpoſes.

And the ſaid laſt-mentioned Conſpirators, their Complices and Confederates, during their March and Invaſion aforeſaid, in open Defiance of his moſt ſacred Majeſty's juſt and undoubted Title to the imperial Crown of theſe Realms, did wickedly and traiterouſly cauſe and procure the ſaid Pretender to be proclaimed in the moſt publick and ſolemn Manner, as King of theſe Realms, and in ſeveral Places in the Counties aforeſaid, or ſome of them, did unlawfully take and ſeize, from his Majeſty's Officers of the Revenue the publick Money, for the Uſe and Service of the ſaid Pretender. And though many of the ſaid Conſpirators are avowed Profeſſors of the Popiſh Religion, yet the more effectually to cover and diſguiſe their moſt wicked and traiterous Deſigns, and to delude his Majeſty's Subjects, they did prevail on and procure ſeveral Men in holy Orders, Miniſters of the Church of *England*, and who had before that Time abjured the ſaid Pretender, to accompany, countenance, and abet the ſaid moſt traiterous Enterprize; and in ſeveral Places in the Counties aforeſaid, where the ſaid Conſpirators,

their

their Complices and Confederates then were, to pray for the ſaid Pretender in the publick Churches as King of theſe Realms.

And the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, did on or about the 9th, 10th, 11th, 12th, or 13th of *November* aforeſaid, traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton* in the County-Palatine of *Lancaſter*, againſt his Majeſty, and did then and there, in a warlike and hoſtile Manner, levy War, oppoſe, engage, and fight againſt his Majeſty's Forces, and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects.

All which Treaſons and Crimes above mention'd were contrived, committed, perpetrated, acted, and done, by the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and other the Conſpirators aforeſaid, againſt our Sovereign Lord the King, his Crown, and Dignity, and contrary to the Duty of their Allegiance, and againſt the Laws and Statutes of this Kingdom.

Of all which Treaſons and Crimes the Knights, Citizens, and Burgeſſes in Parliament aſſembled, do in the Name of themſelves, and of all the Commons of great Britain, impeach the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and every of them.

And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any Time hereafter any other Accuſations or Impeachments againſt the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them; And alſo of replying to the Anſwers which the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them, ſhall make to the Premiſes, or any of them, or to any Impeachment or Accuſation that

ſhall be by them exhibited according to the Courſe and Proceedings of Parliament; and do pray, that the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, be put to anſwer all and every the Premiſes; and that ſuch Proceedings, Examinations, Tryals, and Judgments may be upon them, and every of them, had and uſed as ſhall be agreeable to Law and Juſtice.

To theſe Articles the impeach'd Lords return'd their ſeveral Anſwers, in the following Manner.

On the 19th of *January James* Earl of *Derwentwater* was brought to the Bar of the Houſe of Lords by the Gentleman Uſher of the Black Rod; where he kneeled until the Lord Chancellor directed him to riſe, and his Lordſhip demanded of him, whether he was ready to put in his Anſwer; which he ſaid he was; and deliver'd the ſame at the Bar; which Anſwer was read as follows:

The ANSWER *of* JAMES *Earl of* Derwentwater *to the* Articles *of* Impeachment *of* High-Treaſon, *exhibited againſt him by the Honourable the* Knights, Citizens, *and* Burgeſſes *of* Great Britain *in Parliament aſſembled.*

TO a Charge of ſo high and heinous a Nature, the ſaid Earl cannot anſwer without the deepeſt Concern and Affliction, which becomes more weighty from the Share the Honourable Houſe of Commons have been pleaſed to take in the Accuſation. He aſſures himſelf, however, that great Aſſembly doth not engage in the Proſecution of an Offence, ſo open to Conviction in the ordinary Courſe of Law, with Deſign to intercept that Mercy which the Earl, from the Report of his Majeſty's natural Goodneſs, had Reaſon to expect. It would be a Thought unworthy any Member of that auguſt Body, to imagine he could have the leaſt Deſire of ſpilling the Blood of any of his Fellow-Subjects, whom his Majeſty's great Wiſdom ſhould think a fit Object of his Mercy; the ſaid Earl therefore hopes that his Proſecution is taken out of the common

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common Courſe of Juſtice, with Intentions, that if in his particular Caſe there ſhall appear any Circumſtances inducing Favour or Compaſſion, both your Lordſhips and the Commons may be Interceſſors with his Majeſty for Grace towards him; whereby the Exerciſe of the Royal Mercy, upon which the Earl depended (which amongſt all the Virtues of the Crown moſt endears a Monarch to the Love and Affection of his People) may be extended in ſuch Manner, as may demonſtrate that Clemency for which his Majeſty is ſo greatly renown'd, and not encourage any to offend upon the Preſumption of it for the future. The ſaid Earl acknowledges, with a real Sorrow, that at the Time in the Articles mention'd he was in Arms, and with others did march through and invade ſeveral Parts of this Kingdom; and confeſſes he is thereby guilty of the Offence wherewith he is charg'd in the ſaid Articles: But if any Offence of that Kind was ever attended with Circumſtances which might move Compaſſion, the ſaid Earl hopes he may be intituled to it? He begs Leave to inform your Lordſhips, that his Temper and Inclination diſpos'd him to live peaceably under his Majeſty's Government; and he never had the leaſt Prejudice or Malice againſt his Perſon, nor was he ever heretofore concern'd in or privy to any Deſign or Contrivance to ſubvert or diſturb the eſtabliſhed Government, the Laws or Religion of this Kingdom; and if any Methods were taken by others to accompliſh any of thoſe Ends, he was abſolutely a Stranger to them; nor did he now engage in this unhappy Undertaking upon any previous Concert or Contrivance for any ſuch Purpoſe; but being young and unexperienced, he raſhly, and without any Deliberation, engaged himſelf to meet at *Plainfield*, in *Northumberland*, on Aſſurance that many of his Relations and Acquaintance would appear there. That his Undertaking was ſudden, appears, in that he engaged in it without any previous Preparation of Men, Horſes, Arms, or other warlike Accoutrements; and as the ſaid Earl cannot be juſtly reproached with any cruel, ſevere, or harſh Action during the Continuance in Arms, ſo he took the firſt Opportunity that offer'd of ſubmitting to the King's Mercy. After the ſudden Skirmiſhes at *Preſton*, the ſaid Earl, with others, was ſolicitous

to prevent any further Deſtruction of the Lives of his Majeſty's Subjects, and inſtrumental to induce all in Arms to ſubmit themſelves to the King, provided they might be ſecured of their Lives. One of his Majeſty's Officers, ſent from the General, gave them Encouragement to believe, that the Surrender of themſelves would be the ready Way to obtain the King's Mercy: In Confidence whereof, when a Ceſſation was agreed on, the ſaid Earl offer'd himſelf to become one of the Hoſtages for them till next Morning; in which Time he received farther Aſſurances from the Officers, that the King was a Prince of known Clemency; that this was a diſtinguiſhing Part of his Character; and that the free Surrender to Mercy, would be the proper Means to obtain it. The ſaid Earl believes his Majeſty's Officers were very ſenſible, and will be ſo juſt as to acknowledge, that it had not been impracticable for many of thoſe at *Preſton* to make their Way through his Majeſty's Forces; but this Attempt muſt have occaſion'd the Loſs of many Lives, and might have been productive of ill Conſequences to the Government, which the ſaid Earl was deſirous to prevent; and when the Time agreed on for the Ceſſation was near expir'd, and General *Wills* ſeem'd uneaſy in not having receiv'd any Meſſage from thoſe in the Town, the ſaid Earl writ a Letter to exhort them to ſurrender to the King's Mercy; and at the ſame Time declared to the ſaid General, and other Officers, that whatever happened, he was determined to continue with them, and rely entirely on his Majeſty's Clemency and Goodneſs, which he had Encouragement to expect; and in ſuch Circumſtances the ſaid Earl cannot diſtruſt your Lordſhips, or the Commons Readineſs, to uſe their Mediation for Mercy on his Behalf; which will lay him under the higheſt Obligations of Duty and Affection to his Majeſty, and perpetual Gratitude to both Houſes of Parliament.

DERWENTWATER.

The material Words of this Anſwer appearing not to be ſufficiently expreſs and clear, the Lord Chancellor ask'd the Earl of *Derwentwater*, if he meant by the ſaid Anſwer to plead Guilty to the ſaid Articles

Articles of Impeachment. The Earl ſaid, he did; and ſubmitted to the King's Mercy; and humbly deſired their Lordſhips Interceſſion to his Majeſty. And his Anſwer and Plea was recorded accordingly; upon which he withdrew.

Then the Lord *Widdrington* was brought to the Bar; and having there alſo kneeled, was by the Lord Chancellor ask'd the ſame Queſtion as the Earl of *Derwentwater*; and he likewiſe delivered in his Anſwer; which was read as follows.

The ANSWER of WILLIAM *Lord* Widdrington *to the* Articles *of* Impeachment *of* High Treaſon, *exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament aſſembled.*

IT is with inexpreſſible Concern and Affliction the ſaid Lord appears before this Auguſt Aſſembly, charged with Crimes of the moſt heinous Nature; and though it is natural to Mankind to endeavour to conceal their Guilt, and make uſe of all Manner of Defence, eſpecially in the Caſe of Life, yet as he ſurrendered himſelf at *Preſton*, entirely relying on his Majeſty's Mercy, ſo he is now reſolved not to take any Meaſures, which may argue the leaſt Diffidence of that Mercy, or of your Lordſhip's Goodneſs; and therefore the ſaid Lord confeſſes, he is guilty of the Treaſon wherewith he is charged in the ſaid Articles. And after having thus freely acknowledged his Offence, he begs Leave to lay his Caſe before your Lordſhips, and humbly hopes, when the particular Circumſtances are conſidered, it will not be thought to merit the moſt rigorous Puniſhment, but that both your Lordſhips and the Ho- Vol. vi. p. 10.
nourable Houſe of Commons will look upon him, as a proper Object of his Majeſty's Clemency; and he humbly hopes he may not be thought the leſs unworthy of Favour, in that he never before offended, nor was at any Time privy to or acquainted with any Deſign or Contrivance to deſtroy or diſturb the Eſtabliſhed Government, the Laws or Religion of this Kingdom, but came unawares into this ſudden and unpremeditated Action; for although he had met with publick Rumours and Reports of intended Invaſions from Abroad, and Inſurrections at Home,

Home, yet he never knew, or any other Way heard of any formed Deſign againſt the Government, till he was told the Night before of a Meeting intended at *Plainfield*, in *Northumberland*, on the 6th of *October* laſt; and being ſoon after informed, that almoſt all his Neighbours and Acquaintance had there met in Arms, he took a haſty and inconſiderate Reſolution of joining them; nor was he in any ſort prepared for ſuch an Undertaking, having only ſome of his own Family with him, no Arms but his common Fowling-Pieces and wearing Swords, and fewer Horſes than he conſtantly kept for ſeveral Years before, and nothing but the Report of ſo many of his Friends being engaged, could have hurried him on to an Enterprize ſo unaccountably raſh and unjuſtifiable; and he is willing to hope your Lordſhips will eſteem it ſome Alleviation of his Crime, that in a Commotion of that Nature, there was ſo little Violation of the Rights and Properties of thoſe who oppoſed them; for he believes few Inſtances can be found where ſuch a Multitude continued ſo long in Arms, without doing greater Acts of Violence and Injuſtice: The ſaid Lord cannot charge himſelf with any injurious Acts to the Property of his Fellow-Subjects, and endeavoured to prevent them in others; and hopes that it was thence owing, in ſome Meaſure, that there was ſhewn all along greater Marks of Moderation and Humanity, than is common in ſuch a Warlike and Hoſtile Proceeding. The Suddenneſs of the Attack at *Preſton*, without any previous Summons, admitted no Time for mediating a Submiſſion, before the Loſs of that Blood, which was there unfortunately ſpilt; but after the Heat and Surprize of the firſt Action was over, a Ceſſation of Arms was deſired, and upon the mutual Meſſages which then paſſed, the Officers ſent from the General encouraged them to believe the ſurrendering themſelves would be the ready Way to obtain the King's Mercy, and gave them repeated Aſſurances, that they ſubmitted to a Prince of the greateſt Clemency in the World: Upon theſe Hopes and Aſſurances, they made a general Surrender of themſelves to the King; and the ſaid Lord may juſtly take Notice to your Lordſhips, that as he was the laſt who took up Arms, ſo he was the firſt who procured a Meeting of the chief Perſons among them,

in

in order to lay them down; and cannot doubt but your Lordſhips, and the Honourable Houſe of Commons, will think it equitable to make ſome Diſtinction between an obſtinate Reſiſtance, and an early and humble Submiſſion, whereby the Peace and Tranquility of this Part of his Majeſty's Dominions, was entirely reſtor'd. Nature muſt have ſtarted at yielding themſelves up to a certain and ignominious Death, when it muſt be acknowledged that it was not impracticable for many of them to have eſcaped; and it was poſſible ſo great a Number grown deſperate might have obtained further Succeſs, and thereby prevented the ſo-ſpeedy ſuppreſſing that Inſurrection; but the ſaid Lord, and the reſt, having with the utmoſt Confidence relied on the Aſſurances of his Majeſty's great Clemency, and the Hopes of Mercy which had been given them from the Officers who commanded the Royal Forces, he is encouraged with great Earneſtneſs to implore the Interceſſion of your Lordſhips and the Honourable Houſe of Commons with his Majeſty for that Mercy on which they wholly depended; and as he doth not know where Mercy was refuſed to thoſe who ſo early, and with ſo much Reſignation ſubmitted to it, ſo he humbly hopes your Lordſhips may be induced to think, that the Exerciſe of this Divine Virtue by his Majeſty towards thoſe who caſt themſelves at his Royal Feet, upon the ſole Proſpect and Expectation of it, will appear no leſs glorious to his Majeſty, and prove no leſs advantageous to the future Quiet and Tranquility of his Government, than any Examples of Juſtice in ſuch a Caſe can be likely to do: And whatever Marks of Goodneſs and Favour his Majeſty ſhall vouchſafe to the ſaid Lord, will not fail to engage him by the ſtrongeſt Ties of Gratitude, to demonſtrate in the future Courſe of his Life, the moſt conſtant and inviolable Duty to his Majeſty, and the moſt real Eſteem and Veneration for your Lordſhips and the Honourable Houſe of Commons.

WIDDRINGTON.

Then the ſaid *Widdrington* being asked if he had any Thing farther to ſay, he begg'd to be excus'd all Imperfections in his ſaid Anſwer; ſaid he had been

been indiſpos'd with the Gout in his Stomach, and was not able to employ himſelf in preparing his Anſwer till the Night before, and finiſhed it but that Morning; and humbly implor'd their Lordſhip's Interceſſion to his Majeſty for Favour and Mercy; and his Anſwer and Plea being recorded accordingly, he withdrew.

Then the Earl of *Nithiſdale* was brought to the Bar; and having there likewiſe kneeled, was asked the ſame Queſtion as the Earl of *Derwentwater*. And he alſo deliver'd in his Anſwer; which was read as follows:

The ANSWER *of* WILLIAM *Earl of* Nithiſdale *to the* Articles of Impeachment of High Treaſon, *exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament aſſembled.*

IT is with the utmoſt Confuſion the ſaid Earl appears at your Lordſhip's Bar, under the Weight of an Impeachment by the Commons of *Great Britain* for High Treaſon: He humbly begs Leave, in Extenuation of his Crime, to aſſure your Lordſhips, that he was always a zealous Aſſertor of the Liberties of his Country, and never engaged in forming or carrying on any Deſign to ſubvert the ancient eſtabliſhed Government, and the good Laws of this Kingdom; but being ſummoned by thoſe entruſted with the Adminiſtration of the Government in *Scotland* to appear at *Edinburgh*, and being aſſured if he went thither he ſhould be made cloſe Priſoner, he did not obey the Summons, but in all humble Manner apply'd for their Indulgence in diſpenſing with his being committed to Gaol, offering to give any Bail for his peaceable and quiet Behaviour; which being refuſed, and being at that Time in ſo ill a State of Health, that a Confinement in *Edinburgh Caſtle* would have endangered his Life, he was forced to abſcond, and kept private till ſeveral of the Perſons mentioned in the ſaid Impeachment, with many other of his Neighbours, appeared in Arms very near the Place where the ſaid Earl lay concealed; and then he inconſiderately and unfortunately (with four of his Domeſticks, and no other Perſon whatſoever) joined them, and proceeded in their Company to the

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the Places in the ſaid Articles of Impeachment mentioned; but he knew nothing of the intended inſurrection till they were actually in Arms. The ſaid Earl is deeply ſenſible of his great Offence, and not affecting Delay, nor being willing to give your Lordſhips, or the Honourable Houſe of Commons, any unneceſſary Trouble, he does with a Sorrow equal to his Crime confeſs that he is guilty of the Treaſon in the ſaid Articles of Impeachment contain'd, and throws himſelf at his Majeſty's Feet, imploring his Royal Mercy; and to incline his Majeſty thereto, and induce your Lordſhips to recommend him as an Object thereof, he begs Leave to inform your Lordſhips, that when he, and the reſt that were with him at *Preſton*, had engaged in a Battle, a Ceſſaſſion of Arms being agreed to, they had Intimations from his Majeſty's Officers, that if they ſubmitted, they might expect the King's Mercy; and Hiſtory abounding with Inſtances of Conditions ſtipulated with Generals, even with Rebels, and afterwards agreed to, and confirmed by their Sovereigns, they were prevailed on by ſuch Encouragement, together with the Conſideration of his Majeſty's known Clemency, to ſurrender themſelves Priſoners; whereby the Lives of great Numbers of his Majeſty's good Subjects were ſaved, which by an obſtinate Reſiſtance would inevitably have been deſtroy'd; and, therefore, he moſt humbly begs your Lordſhips would be pleaſed to repreſent his Caſe to his Majeſty in the moſt favourable Manner; not doubting, but, by your Lordſhips powerful Interceſſion, he ſhall find, that as he performed the Duty of a good Chriſtian, in concurring to prevent Effuſion of Chriſtian Blood, ſo he acted the Part of a wiſe Man in relying upon a Mercy ſo extenſive as that of his Majeſty: And he preſumes, when the Honourable Houſe of Commons are appriz'd of the Nature of his Caſe, they will not interpoſe to prevent him from having a Share in the Benefit of that Mercy.

NITHISDALE.

And the Earl of *Nithiſdale* being asked, if he had any Thing farther to ſay; he ſaid, he had nothing, but to implore the King's Mercy. And his Anſwer and

and Plea was recorded accordingly; and he withdrew.

Then the Earl of *Carnwath* was brought to the Bar; and having there likewiſe kneeled, was asked the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid, he had no Anſwer in Writing; but deſired to throw himſelf on the King's Mercy; and humbly implored their Lordſhips Interceſſion to his Majeſty on his Behalf; and aſſured the Houſe, if the ſame were granted, he ſhould think himſelf obliged to live under the ſtricteſt Ties of Loyalty to his Majeſty. And as to the ſaid Articles, he ſaid, he was guilty of the High Treaſon contained in the ſaid Articles of Impeachment againſt him. And the ſaid Plea was recorded accordingly; and he withdrew.

Then the Viſcount *Kenmure* was brought to the Bar; and having there kneeled alſo, was asked the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid, he had no Anſwer in Writing; but was guilty of the Charge of High Treaſon contained in the Articles of Impeachment againſt him; and begged the Houſe would intercede with his Majeſty for Mercy. And his Plea was recorded accordingly; and he withdrew.

Then the Lord *Nairn* was brought to the Bar; and having there alſo kneeled, was by the Lord Chancellor asked the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid he threw himſelf upon the King's Mercy; and begged the Interceſſion of this Houſe to his Majeſty. And as to the Articles of Impeachment exhibited againſt him, he ſaid he was guilty of the High Treaſon contained in the ſaid Articles. And his Plea was recorded accordingly. Then he delivered in a Petition at the Bar; and the ſame was read as follows:

To

To the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled.

The Humble Petition of William *Lord* Nairn.

Sheweth,

THAT your Petitioner was educated, and hath always continued a Proteſtant, according to the Diſcipline to the Church of *England*; and though, by Reaſon of ſome miſtaken Principles he unwarily imbib'd in his tender Years, he did not in all Reſpects conform to the late Revolution, lying under the leſs Neceſſity, for that he had married an Heireſs, in whom all the Right of your Petitioner's Eſtate is inveſted; and though he never took the Oaths, yet he always peaceably ſubmitted to, and lived quietly under the Government as by Law eſtabliſhed, until the breaking out of this Rebellion, in which your Petitioner was inadvertantly involv'd, but not before the Lord *Mar* and his Adherents had, for a conſiderable Time, made themſelves Maſters of *Perth* and *Dunkeld*, and thereby ſurrounded your Petitioner's whole Eſtate, and came to your Petitioner's Houſe, lying in the Middle between thoſe Places. Your Petitioner heartily repents of this raſh Undertaking, and ſolemnly declares he knew nothing of any previous Conſultations or Conſpiracies in Fa- Vol. vi. p. 12.
vour of the Pretender, before he actually appeared in Arms; nor knew any Thing about croſſing the *Forth*, until the Morning he was ſent over under *Macintoſh*'s Command; and then was ſo far from approving of that Expedition, that though to avoid the Imputation of Cowardice he would hazard his own Perſon therein, your Petitioner order'd back all his Dependants, and was only attended by his Son and four Servants, who would not leave him in a Time of Danger, though often deſired; nor was your Petitioner privy to any Deſigns of marching into *England*; for having been bred a Seamen, he had no Pretentions to Knowledge in the Land Service.

Your Petitioner being now ſenſible of his Errors, hath pleaded guilty to the Articles of Indictment of High Treaſon, exhibited againſt him by the Honourable Houſe of Commons, and thrown himſelf at his

his Majeſty's Feet, humbly beſeeching your Lordſhips, in Commiſeration of the deplorable Circumſtances of your Petitioner and his twelve Children, to recommend him to his Majeſty for that Mercy, which at the Time of his Surrender he was made to believe he might reaſonably expect.

This will lay your Petitioner and his Poſterity under the greateſt Obligations of Duty and Gratitude to his Majeſty, and bind them for ever to bleſs your Lordſhips, as the merciful Inſtruments of procuring ſuch a gracious Deliverance.

And your Petitioner ſhall ever pray, &c.

NAIRN.

And being asked if he had any Thing farther to ſay, he ſaid he had not; and withdrew.

The Houſe of Commons having demanded Judgment againſt the Impeached Lords, who had pleaded guilty, and the 9th of *February* being appointed for that Solemnity, the Lords came from their Houſe to their Court erected in *Weſtminſter-Hall*, where having taken their reſpective Places, his Majeſty's Commiſſion, appointing the Lord *William Cowper*, Lord High Chancellor of *Great Britain*, to be Lord High Steward, for giving Judgment againſt the Impeached Lords, was read; and his Grace having removed from the Wool-Pack to an armed Chair, placed on the uppermoſt Step but one of the Throne, as it was prepared for that Purpoſe, and then ſeated himſelf in the Chair, and delivered his White Staff to the Gentleman Uſher of the Black-Rod, who ſtood on his Right-Hand, and the Seal-Bearer holding the Purſe on his Left.

Silence being commanded by the Serjeant at Arms, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, were all brought to the Bar by the Deputy-Governor of the *Tower*, having the Ax carried before them by the Gentlemen Gaoler, who ſtood with it on the Left-Hand of the Priſoners, with the Edge turned from him. The Priſoners, when they approached the Bar, after kneeling, bowed to his Grace the Lord High Steward, and to the Houſe of Peers,

Peers; which Compliment was returned to them by his Grace and the Peers, and the Articles of Impeachment exhibited by the Commons, as above inſerted, were read. After which they were ſeverally asked by the Lord High Steward, what they had to ſay why Judgment ſhould not paſs upon them according to Law, beginning with the Earl of *Derwentwater*; who returned the following Anſwers.

Earl of *Derwentwater's* Anſwer.

I Only humbly beg Leave of my Noble Peers to repeat a few Circumſtances, mentioned in my Anſwer to the Articles of Impeachment, exhibited againſt me by the Honourable Houſe of Commons.

But the Terrors of your Lordſhip's juſt Sentence, which at once deprive me of my Life and Eſtate, and compleat the Misfortunes of my Wife and innocent Children, are ſo heavy upon my Mind, together with my Unexperience, that I am ſcarce able to alledge what may extenuate my Offence, if any Thing can do it. I have confeſt myſelf Guilty: But, my Lords, that Guilt was raſhly incurr'd without any Premeditation, as I hope your Lordſhips will be convinced by one Particular; I beg Leave to obſerve, I was wholly unprovided with Men, Horſes, Arms, and other Neceſſaries, which in my Situation I could not have wanted, had I been privy to any formed Deſign. As my Offence was ſudden, ſo my Submiſſion was early: When his Majeſty's General thought fit to demand Hoſtages for ſecuring the Terms of the Ceſſation, I voluntarily offered myſelf; without which the Ceſſation might poſſibly have proved ineffectual: And whilſt I continued Hoſtage, the great Character of his Majeſty's Clemency, and the repeated Encouragment I had to hope for Mercy, by ſurrendering to it, ſoon determin'd me; and I accordingly declared my Reſolution to remain with his Majeſty's Forces, and from that Time ſubmitted myſelf to his Goodneſs, on which I ſtill entirely depend. I humbly hope to obtain the Mediation of your Lordſhips, and of the Honourable Houſe of Commons, in my Behalf; ſolemnly proteſting my future Conduct ſhall ſhew me not altogether unworthy your Generous Compaſſion for my Life, which is all I can beg of his Majeſty.

Lord *Widdrington*'s Anſwer.

MY Lords, I have abandoned all Manner of Defence ever ſince I firſt ſurrender'd myſelf to his Majeſty's Royal Clemency, and only now beg Leave to repeat to your Lordſhips ſome Circumſtances of my unhappy Caſe, which I have already ſet forth in my Anſwer.

Your Lordſhips ſee before you an unfortunate Man, who, after leading a private and retired Life for many Years, has by one raſh and inconſiderate Action expoſed himſelf and his Family to the greateſt Calamities and Miſery, and is now upon the Point of receiving the ſevereſt Sentence directed by any of our *Engliſh* Laws.

I do proteſt to your Lordſhips, that I was never privy to any concerted Meaſures againſt his Majeſty's Royal Perſon, or the eſtabliſhed Government. As to the Inſurrection in *Northumberland*, I only heard of it accidentally the Night before it happen'd; and being ſoon after informed that all my Neighbours and Acquaintance had met in Arms, a Crowd of confuſed and miſtaken Notions hurried me at once into a precipitate Reſolution of joining them; a Reſolution, which I muſt own I could never ſince calmly reflect upon, without Part of that Confuſion I find myſelf under in the publick Acknowledgment of ſo much Raſhneſs and Folly. After thus plunging out of my Depth, as unprepared for ſuch an Enterprize, as the Action was unpremeditated, I cannot, for my own Particular, upon the ſtricteſt Recollection, charge myſelf with any Violation of the Properties of my Fellow-Subjects; but on the contrary, I always endeavoured to encourage Humanity and Moderation during the whole Courſe of our miſerable Expedition: And in order to make the beſt Attonement in my Power for the great Fault I had been guilty of, I can juſtly ſay, that I was in no ſmall Degree inſtrumental in procuring a general Submiſſion to his Majeſty. But, my Lords, however willing or deſirous, either I or any others might be to put a ſpeedy End to thoſe unfortunate Troubles, Self-Preſervation, the firſt and moſt powerful Law of Nature, would have rendered the Propoſal vain and fruitleſs, had not the Officers who commanded the Royal Forces given us Hopes of Mercy, and aſſured us, we ſubmitted to a Prince of the greateſt

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greateſt Clemency in the World. Theſe Hopes, and this Aſſurance, anſwer'd the ſtrongeſt Objections, overcame all remaining Difficulties, and gave the finiſhing Stroke to a general Surrender, whereby the further Effuſion of *Britiſh* Blood was prevented, and a perfect Tranquility reſtored to theſe Parts of his Majeſty's Dominions.

My Lords, as this my firſt Attempt was raſh and unpremeditated, as I always uſed and promoted Moderation and Humanity towards my Fellow-Subjects, and as I did not obſtinately perſiſt in my Fault, but was the firſt who propoſed an early Submiſſion to his Majeſty, I humbly hope my unhappy Caſe, and the deplorable Condition of my unfortunate Children, already deprived of their tender Mother, will raiſe a generous Compaſſion in your Lordſhips, and the Honourable Houſe of Commons; and I moſt earneſtly entreat both your Lordſhips, and that Honourable Houſe, to become Interceſſors with his Majeſty in my Behalf, for that Mercy which I was encouraged to hope for when I firſt ſurrendered, and which I have ever ſince with the utmoſt Confidence relied upon.

I have only to add my moſt ſolemn Aſſurance before this Auguſt Aſſembly, that no future Time ſhall ever find me wanting in the moſt inviolable Duty and Gratitude to that merciful Prince who gives me my Life, and reſtores a Father to five miſerable and diſtreſſed Orphans; and I ſhall always retain the higheſt Eſteem and Veneration for your Lordſhips and the Honourable Houſe of Commons.

Lord *Nithiſdale's* Anſwer.

MY Lords, I have confeſſed myſelf guilty, relying only on his Majeſty's Mercy; and I beg Leave to aſſure your Lordſhips, I was never privy to any Plot or Deſign againſt his Majeſty's Perſon or Government, and was unprovided with any Neceſſaries for ſuch a Purpoſe; but raſhly and inconſiderately, with only four of my Servants, joined thoſe who appeared in Arms in my Neighbourhood, and was one of the laſt who went unto them.

At *Preſton*, my Lords, his Majeſty's Generals gave great Hopes and Encouragement to believe, that ſurrendering to his Majeſty's Mercy was the ready Way to obtain it, with repeated Aſſurances that his Majeſty was a Prince of the greateſt Clemency.

Upon thoſe Hopes and Aſſurances I ſubmitted myſelf, and ſtill entirely depend on his Majeſty's Goodneſs, earneſtly beſeeching your Lordſhips, and the Honourable Houſe of Commons, to intercede with his Majeſty on my Behalf.

And I ſolemnly promiſe your Lordſhips, I ſhall during the Remainder of my Life pay the utmoſt Duty and Gratitude to his moſt Gracious Majeſty, and the higheſt Veneration and Reſpect to your Lordſhips and the Honourable Houſe of Commons.

Lord *Carnwath's* Anſwer.

MY Lords, I ſhall not trouble this great Aſſembly with a Repetition of what I ſaid when formerly before your Lordſhips and his Majeſty's Council.

I hope theſe Noble Lords entertain that favourable Opinion of my ſincere Dealing then, as to believe that want of Experience and Knowledge of the Laws, was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only Thing I can hope or wiſh for, is his Majeſty's Mercy: He has the Character of a merciful Prince: Should it pleaſe him to think me a proper Object for it, (tho' I muſt confeſs myſelf a very unworthy one,) all I can ſay, my Lords, is, that the Remainder of my Life ſhall convince his Majeſty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body the Peerage, now expecting your Lordſhips Judgment, as to Life or Death: Should it be for Life, my Demeanour and Carriage for the future will be ſuch, as none of your Lordſhips ſhall be aſham'd of having ſhew'd me Compaſſion: But ſhould it be for Death, God's Will be done. To my laſt Hour I ſhall pray for the Nation's and your Lordſhips Proſperity, having this Comfort in my preſent Diſtreſs, that your Lordſhips are my Judges at this Tribunal: And yet a greater Comfort have I, that I am ſoon to appear before a Greater, where I can't deſpair of finding Mercy and Forgiveneſs for all my Sins.

I beg God Almighty's Pardon for them: I have already ask'd his Majeſty's, and I do it now. And I do humbly beg Leave, once more, and perhaps the

the laſt Occaſion that ever I ſhall have, to deſire that your Grace, this Noble Houſe, and the Honourable Commons of *Great Britain*, who are now here, would intercede with his Majeſty for me.

I take my Leave of your Lordſhips, and wiſh you all Happineſs.

Lord *Kenmure's* Anſwer. Vol. vi. p. 14.

MY Lords, I am truly ſenſible of my Crime, and want Words to expreſs my Repentance. God knows I never had any perſonal Prejudice againſt his Majeſty; nor was I ever acceſſary to any previous Deſign againſt him. I humbly beg my Noble Peers, and the Honourable Houſe of Commons, to interceed with the King for Mercy to me, that I may live to ſhew myſelf the dutifulleſt of his Subjects, and to be the Means to keep my Wife and four ſmall Children from ſtarving; the Thoughts of which, with my Crime, makes me the moſt unfortunate of all Gentlemen.

Lord *Nairn's* Anſwer.

I Am very ſenſible how unfit I am to plead my own Cauſe before your Grace, (my Lord High-Steward,) and this Auguſt Aſſembly; and, therefore, though I could ſay much to extenuate the Crime for which I ſtand impeached, yet I chuſe rather to lay my whole Streſs upon the King's Mercy; for which he is ſo renowned, and which I was put in Hopes of at the Time of my Surrender. In Conſideration whereof, and in Compaſſion to an afflicted Wife and Twelve Children, I ſtill hope, by the Mediation of your Grace, my Noble Lords, and the Honourable Houſe of Commons, I may obtain it; ſolemnly proteſting, that in Gratitude for ſo ſignal a Deliverance, I will, to the End of my Life, remain a dutiful and obedient Subject to his moſt Gracious and Sacred Majeſty King *George*.

The Lord High-Steward asked every one of them, if they had any Thing to ſay in Arreſt of Judgment; and each anſwering, No, Proclamation was made for Silence.

Then his Grace the *Lord High-Steward*, upon proceeding to Judgment againſt *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, made the following Speech unto them.

JAMES Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*;

You ſtand impeached by the Commons of *Great Britain* in Parliament aſſembled of High Treaſon, in traiterouſly imagining and compaſſing the Death of his moſt ſacred Majeſty, and in conſpiring, for that End, to levy a bloody and deſtructive War againſt his Majeſty, in order to depoſe and murder him; and in levying War accordingly, and proclaiming a Pretender to his Crown to be King of theſe Realms.

Which Impeachment, though one of your Lordſhips, in the Introduction to his Plea, ſuppoſes to be out of the Ordinary and Common Courſe of Law and Juſtice, is yet as much a Courſe of proceeding according to the Common Law, as any other whatſoever.

If you had been indicted, the Indictment muſt have been remov'd, and brought before the Houſe of Lords, (the Parliament ſitting.) In that Caſe you had ('tis true) been accuſed only by the Grand Jury of one County; in the preſent, the whole Body of the Commons of *Great Britain*, by their Repreſentatives, are your Accuſers.

And this Circumſtance is very obſervable, (to exclude all poſſible Suppoſition of Hardſhip, as to the Method of proceeding againſt you,) that however all great Aſſemblies amongſt us are apt to differ on other Points, you were impeached by the unanimous Opinion of the Houſe of Commons, (not one contradicting.)

They found themſelves, it ſeems, ſo much concerned in the Preſervation of his moſt truly ſacred Majeſty, and the Proteſtant Succeſſion, (the very Life and Soul of theſe Kingdoms,) that they could not omit the firſt Opportunity of taking their proper

Part

Part, in order to ſo ſignal and neceſſary an Act of his Majeſty's Juſtice.

And thus the whole Body Politick of this free Kingdom has, in a manner, roſe up in its own Defence, for the Puniſhment of thoſe Crimes which, 'twas rightly apprehended, had a direct Tendency to the everlaſting Diſſolution of it.

To this Impeachment you have ſeverally pleaded, and acknowledged yourſelves Guilty of the High-Treaſon therein contain'd.

Your Pleas are accompanied with ſome Variety of Matter, to mitigate your Offences, and to obtain Mercy.

Part of which, as ſome of the Circumſtances, ſaid to have attended your Surrender, ſeeming to be offer'd rather as Arguments only for Mercy, than any Thing in Mitigation of your preceding Guilt, is not proper for me to take notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I ſhould take this Occaſion to make ſome Obſervations to your Lordſhips upon it; to the End that the Judgment to be given againſt you may clearly appear to be juſt and righteous, as well as legal; and that you may not remain under any fatal Error, in reſpect of a greater Judicature, by reflecting with leſs Horror and Remorſe on the Guilt you have contracted, than it really deſerves.

It is alledg'd by ſome of your Lordſhips, that you engaged in this Rebellion without previous Concert or Deliberation, and without ſuitable Preparations of Men, Horſes, and Arms.

If this ſhould be ſuppoſed true, on ſome of your Lordſhips averring it, I deſire you to conſider, that as it exempts you from the Circumſtance of contriving this Treaſon, ſo it very much aggravates your Guilt in that Part you have undoubtedly born in the Execution of it.

For it ſhews, That your Inclinations to rebel were ſo well known, (which could only be from a continued Series of your Words and Actions,) that the Contrivers of that horrid Deſign depended upon you, and therein judg'd rightly: That your Zeal to engage in this Treaſon was ſo ſtrong, as to carry you into it on the leaſt Warning, and the very firſt Invitation: That you would not excuſe yourſelves by

Vol. vi. p. 15. want of Preparation, as you might have done: And that rather than not have a Share in the Rebellion, you would plunge yourſelves into it almoſt naked, and unprovided for ſuch an Enterprize. In ſhort, that your Men, Horſes, and Arms, were not ſo well prepared as they might, and would have been on longer Warning; but your Minds were.

It is alledg'd alſo as an Extenuation of your Crime, that no cruel or harſh Action (I ſuppoſe is meant no Rapine or Plunder, or worſe) has been committed by you.

This may in part only be true: But then your Lordſhips will at the ſame Time conſider, that the laying waſte a Tract of Land bears but a little Proportion in point of Guilt, compared with that Crime of which you ſtand convicted; an open Attempt to deſtroy the beſt of Kings, to ruin the whole Fabrick, and raze the very Foundations of a Government, the beſt ſuited of any in the World to perfect the Happineſs, and ſupport the Dignity of human Nature. The former Offence cauſes but a Miſchief that is ſoon recover'd, and is uſually pretty much confin'd; the latter, had it ſucceeded, muſt have brought a laſting and univerſal Deſtruction on the whole Kingdom.

Beſides, much of this was owing to Accident: YourMarch was ſo haſty, partly to avoid the King's Troops, and partly from a vain Hope to ſtir up Inſurrections in all the Counties you paſſed through, that you had not Time to ſpread Devaſtation, without deviating from your main, and, as I have obſerv'd, much worſe Deſign.

Farther, 'tis very ſurprizing that any concerned in this Rebellion, ſhould lay their engaging in it on the Governments doing a neceſſary and uſual Act, in like Caſes, for its Preſervation; the giving Orders to confine ſuch as were moſt likely to join in that Treaſon: 'Tis hard to believe that any one ſhould rebel, merely to avoid being reſtrain'd from rebelling; or that a gentle Confinement would not much better have ſuited a crazy State of Health, than the Fatigues and Inconveniences of ſuch long and haſty Marches in the Depth of Winter.

Your Lordſhips riſing in Arms, therefore, has much more juſtify'd the Prudence and Fitneſs of thoſe Orders, than thoſe Orders will in any wiſe

ſerve

ſerve to mitigate your Treaſon. Alas! happy had it been for all your Lordſhips, had you fallen under ſo indulgent a Reſtraint!

When your Lordſhips ſhall in good Earneſt apply your ſelves to think impartially on your Caſe, ſurely you will not your ſelves believe, that 'tis poſſible, in the Nature of the Thing, to be engaged, and continue ſo long engaged, in ſuch a difficult and laborious Enterpriſe, through Raſhneſs, Surprize, or Inadvertency; or that had the Attack at *Preſton* been leſs ſudden, (and conſequently the Rebels better prepared to receive it,) your Lordſhips had been reduced the ſooner, and with leſs, if not without any Bloodſhed.

No, my Lords, theſe, and ſuch like, are artful Colourings, proceeding from Minds fill'd with Expectation of continuing in this World; and not from ſuch as are preparing for their Defence before a Tribunal, where the Thoughts of the Heart, and the true Springs and Cauſes of Actions, muſt be laid open.

And now, my Lords, having thus removed ſome falſe Colours you have uſed; to aſſiſt you yet farther in that neceſſary Work of thinking on your great Offence as you ought, I proceed to touch upon ſeveral Circumſtances that ſeem greatly to aggravate your Crime, and which will deſerve your moſt ſerious Conſideration.

The divine Virtues ('tis one of your Lordſhips own Epithets) which all the World, as well as your Lordſhips, acknowledge to be in his Majeſty, and which you now lay claim to, ought certainly to have withheld your Hands from endeavouring to depoſe, to deſtroy, to murder that moſt excellent Prince; ſo the Impeachment ſpeaks, and ſo the Law conſtrues your Actions: And this is not only true in the Notion of Law, but almoſt always ſo in Deed and Reality. 'Tis a trite, but very true Remark, that there are but few Hours between Kings being reduced under the Power of Pretenders to their Crown, and their Graves: Had you ſucceeded, His Majeſty's Caſe would, I fear, have hardly been an Exception to that general Rule, ſince 'tis highly improbable, that Flight ſhould have ſaved any of that illuſtrious and valiant Family.

'Tis

'Tis a farther Aggravation of your Crime, that his Majeſty, whom your Lordſhips would have dethron'd, affected not the Crown by Force, or by the Arts of Ambition, but ſucceeded peaceably and legally to it; and on the Diſeaſe of her late Majeſty, without Iſſue, became undoubtedly the next in Courſe of Deſcent capable of ſucceeding to the Crown by the Law and Conſtitution of this Kingdom, as it ſtood declared ſome Years before the Crown was expreſly limited to the Houſe of *Hanover*. This Right was acknowledg'd, and the Deſcent of the Crown limited or confirmed accordingly, by the whole Legiſlature in two ſucceſſive Reigns; and more than once in the latter; which your Lordſhips Accomplices are very far from allowing, would biaſs the Nation to that Side.

How could it then enter into the Heart of Men, to think that private Perſons might, with a good Conſcience, endeavour to ſubvert ſuch a Settlement by running to tumultuary Arms, and by intoxicating the Dregs of the People with contradictory Opinions, and groundleſs Slanders? or that God's Providence would ever proſper ſuch wicked, ſuch ruinous Attempts?

Eſpecially, if, in the next Place, it be conſider'd, that the moſt fertile Inventions on the Side of the Rebellion, have not been able to aſſign the leaſt Shadow of a Grievance as the Cauſe of it: To ſuch poor Shifts have they been reduc'd on this Head, that for want of better Colours, it has been objected in a ſolemn Manner, by your Lordſhips Aſſociates, to his Majeſty's Government, That his People do not enjoy the Fruits of Peace, as our Neighbours have done ſince the laſt War. Thus they firſt rob us of our Peace, and then upbraid us that we have it not. 'Tis a monſtrous Rebellion that can find no Fault with the Government it invades, but what is the Effect of the Rebellion itſelf.

Your Lordſhips will likewiſe do well to conſider what an additional Burthen your Treaſon has made neceſſary on the People of this Kingdom, who wanted, and were about to enjoy ſome Reſpite. To this End, 'tis well known, that all New, or Increaſe of Taxes, were the laſt Year carefully avoided; and his Majeſty was contented to have no more

more Forces than were juſt ſufficient to attend his Perſon, and ſhut the Gates of a few Garriſons. Vol. vi. p. 16.

But what his Majeſty thus did for the Eaſe and Quiet of his People, you moſt ungratefully turn'd to his Diſadvantage, by taking Encouragement from thence, to endanger his and his Kingdoms Safety, and to bring Oppreſſion on your Fellow-Subjects.

Your Lordſhips obſerve I avoid expatiating on the Miſeries of a Civil War, a very large and copious Subject: I ſhall but barely ſuggeſt to you on that Head, that whatever thoſe Calamities may happen to be in the preſent Caſe, all who are, at any Time, or in any Place, Partakers in the Rebellion, (eſpecially Perſons of Figure and Diſtinction,) are in ſome Degree reſponſible for 'em: And therefore your Lordſhips muſt not hold your ſelves quite clear from the Guilt of thoſe Barbarities which have been lately committed by ſuch as are engaged in the ſame Treaſon with you, and not yet perfectly reduced, in burning the Habitations of their Countrymen, and thereby expoſing many Thouſands to Cold and Hunger in this rigorous Seaſon.

I muſt be ſo juſt to ſuch of your Lordſhips as profeſs the Religion of the Church of *Rome*, that you had one Temptation, and that a great one, to engage you in this Treaſon, which the others had not; in that 'twas evident, Succeſs on your Part muſt for ever have eſtabliſhed Popery in this Kingdom, and that probably you could never have again ſo fair an Opportunity.

But then, good God! how muſt thoſe Proteſtants be covered with Confuſion, who enter'd into the ſame Meaſures, without ſo much as capitulating for their Religion, (that ever I could find, from any Examination I have ſeen or heard,) or ſo much as requiring, much leſs obtaining a frail Promiſe, that it ſhould be preſerv'd, or even tolerated.

It is my Duty to exhort your Lordſhips, thus to think of the Aggravations, as well as the Mitigations (if there be any) of your Offences; and if I could have the leaſt Hopes, that the Prejudices of Habit and Education would not be too ſtrong for the moſt earneſt and charitable Entreaties, I would beg you not to rely any longer on thoſe Directors of your Conſciences, by whoſe Conduct you have very probably been led into this miſerable Condition;

tion; but that your Lordſhips, would be aſſiſted by ſome of thoſe pious and learned Divines of the Church of *England*, who have conſtantly bore that infallible Mark of ſincere Chriſtians univerſal Charity.

And now, my Lords, nothing remains, but that I pronounce upon you (and ſorry I am that it falls to my Lot to do it) that terrible Sentence of the Law, which muſt be the ſame that is uſually given againſt the meaneſt Offender in the like Kind.

The moſt ignominious and painful Parts of it are uſually remitted by the Grace of the Crown to Perſons of your Quality; but the Law, in this Caſe, being deaf to all Diſtinctions of Perſons, requires I ſhould Pronounce, and accordingly it is adjudg'd by this Court,

" That you *James* Earl of *Derwentwater*, *Wil-*
" *liam* Lord *Widdrington*, *William* Earl of
" *Nithiſdale*, *Robert* Earl of *Carnwath*, *Wil-*
" *liam* Viſcount *Kenmure*, and *William* Lord
" *Nairn*, and every of you, return to the
" Priſon of the Tower from whence you came;
" from thence you muſt be drawn to the Place
" of Execution; when you come there, you
" muſt be hang'd by the Neck, but not till you
" be dead; for you muſt be cut down alive,
" then your Bowels muſt be taken out, and
" burnt before your Faces: Then your Heads
" muſt be ſevered from your Bodies, and your
" Bodies divided each into four Quarters; and
" theſe muſt be at the King's Diſpoſal.
And God Almighty be merciful to your Souls.

Then the Lord High-Steward ſtood up uncovered; and, declaring there was nothing more to be done by Virtue of the preſent Commiſſion, broke the Staff, and pronounced it diſſolv'd; and then leaving the Chair, came down to the Wooll-Pack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

The condemn'd Lords Petition to the two Houſes.

The Writs for executing the ſaid ſix Lords being on the 18th of *February* deliver'd to the Lieutenant of the *Tower*, and the Sheriffs of *London*, and *Middleſex*, they petitioned both Houſes of Parlia-

Parliament, on the 22d of the ſame Month, to interceed with his Majeſty on their Behalf. And the Lords preſented an Addreſs accordingly. To which the King only anſwered: "That on this and all other "Occaſions, he ſhou'd do what he thought moſt "conſiſtent with the Dignity of his Crown, and "the Safety of his People."

Three of them ordered to be executed.

The Commons, to avoid Importunity, adjourn'd themſelves; and an Order of Council was iſſued on the 23d Inſtant for executing the Earl of *Derwentwater*, the Earl of *Nithiſdale*, and the Lord Viſcount *Kenmure*. The next Day the other three were reprieved till the 7th of *March*.

Debates in Council on reprieving ſome of them.

The Debates in Council run high on this Occaſion. The Earl of *Nottingham*, Lord Preſident of the Council, was ſoon made ſenſible of the Reſentment of the Court; he and all that were related to him, being turn'd out of their Places.

Earl *Derwentwater*, and *Kenmure* executed.

James Earl of *Derwentwater*, and *William* Viſcount *Kenmure*, were brought to the Scaffold on *Tower-Hill* on the ſaid 24th of *February*. The Earl had ſuch Aſſurances given him of his Life by his Friends, that he was under ſome Surpriſe. But the Lord *Kenmure* ſeemed well prepared for the fatal Stroke: The Compoſure and Serenity of his Mind, was admir'd by all that ſaw him.

The Lord *Derwentwater* read the following Paper at his Execution.

BEING in a few Minutes to appear before the Tribunal of God, where, tho' moſt unworthy, I hope to find Mercy, which I have not found from Men now in Power; I have endeavour'd to make my Peace with his divine Majeſty, by moſt humbly begging Pardon for all the Sins of my Life: And I doubt not of a merciful Forgiveneſs through the Merits of the Paſſion and Death of my Saviour Jeſus Chriſt; for which End I earneſtly deſire the Prayers of all good Chriſtians. Vol. vi. p. 17.

After this I am to ask Pardon of thoſe whom I might have ſcandalized, by pleading Guilty at my Tryal. Such as were permitted to come to me, told me, that having been undeniably in Arms, pleading Guilty was but the Conſequence of having ſubmitted to Mercy; and many Arguments were uſed

uſed to prove there was nothing of Moment in ſo doing; amongſt others, the univerſal Practice of ſigning Leaſes, whereof the Preambles run in the Name of the Perſon in Poſſeſſion.

But I am ſenſible, that in this I have made bold with my Loyalty, having never any other but King *James* the Third for my rightful and lawful Sovereign; him I had an Inclination to ſerve from my Infancy, and was moved thereto by a natural Love I had to his Perſon, knowing him to be capable of making his People happy; and though he had been of a different Religion from mine, I ſhould have done for him all that lay in my Power, as my Anceſtors have done for his Predeceſſors, being thereto bound by the Laws of God and Man.

Wherefore, if in this Affair I have acted raſhly, it ought not to affect the Innocent: I intended to wrong no Body, but to ſerve my King and Country, and that without Self-Intereſt; hoping, by the Example I gave, to have induced others to their Duty; and God, who ſees the Secrets of my Heart, knows I ſpeak Truth. Some Means have been propoſed to me for ſaving my Life, which I look'd upon as inconſiſtent with Honour and Conſcience, and therefore I rejected them; for, with God's Aſſiſtance, I ſhall prefer any Death to the doing a baſe unworthy Action. I only wiſh now, that the laying down my Life might contribute to the Service of my King and Country, and the Reeſtabliſhment of the ancient and fundamental Conſtitution of theſe Kingdoms, without which no laſting Peace or true Happineſs can attend them: Then I ſhould indeed part with Life even with Pleaſure. As it is, I can only pray, that theſe Bleſſings may be beſtowed upon my dear Country; and ſince I can do no more, I beſeech God to accept of my Life as a ſmall Sacrifice towards it.

I die a Roman Catholick: I am in perfect Charity with all the World; I thank God for it, even with thoſe of the preſent Government, who are moſt inſtrumental in my Death. I freely forgive ſuch as ungenerouſly reported falſe Things of me, and I hope to be forgiven the Treſpaſſes of my Youth by the Father of infinite Mercy, into whoſe Hand I commend my Soul.

Ja. Derwentwater

P. S. If that Prince, who now governs, had given me my Life, I ſhould have thought my ſelf obliged never more to have taken up Arms againſt him.

After the Reading this Paper, he deliver'd it to the Sheriff. Then turning to the Block, and finding a rough Place, he bid the Executioner chip it off. Then pulling off his Coat and Weſtcoat, he lay down to fit his Neck to the Block, telling the Executioner, that the Sign he ſhould give him, was, *Lord Jeſu, receive my Soul*; and at the third Time of repeating it, he was to do his Office. Which he accordingly did at one Blow.

Immediately after the Earl was executed, the Lord *Kenmure* was brought to the Scaffold, accompany'd by his Son and ſome Friends, and attended by two Clergymen of the Church of *England*; which was the Religion he profeſs'd. He made no other Speech, than that he was concern'd that he had pleaded Guilty. After which laying down his Head on the Block, he rais'd it up again; and ſtill continuing on his Knees, gave the Executioner ſome Money, and told him he wou'd give him no Sign, but when he laid down his Head again, he might perform his Office as he ſaw good. Then having lifted up his Hands a ſhort Time in Prayer, he reſolutely laid down his Head; which at two Blows was ſever'd from his Body.

After his Execution, a Letter was found, which he wrote to the Pretender, (whom he ſtiled King *James*;) in which he declared, that he died for his faithful Services to his Majeſty; but hop'd the Cauſe he died for would flouriſh after his Death: And as he ſuffered for his Service, he hop'd his Majeſty wou'd provide for his Wife and Children.

The other Lords, *viz.* Lord *Widdrington*, Earl of *Carnwath*, and Lord *Nairn*, were firſt reprieved to the 7th of *March*, and afterwards pardon'd: But the Earl of *Nithiſdale*, the Day before the Execution of the Lord *Derwentwater*, found Means to make his Eſcape out of the Tower, diſguiſed in Womens Apparel, and has not been heard of ſince.

The TRYAL *of* GEORGE *Earl of* Wintoun *for High-Treaſon, on* March 15, 16, 19. 2 Geo. I. 1715.

The Earl impeach'd.

THE Earl was impeach'd on *Monday* the 9th of *January*, 1715. and the ſame Day the Articles againſt him were read in the Houſe of Lords; and it was ordered that the ſaid Earl, with the other impeach'd Lords, ſhou'd be brought to the Bar the next Day, to hear the ſaid Articles read.

Allow'd Time to Anſwer.

On *Tueſday* the 10th of *January*, the Earl and the other impeach'd Lords being brought to the Bar, and having heard the Articles read, the Lord Chancellor acquainted them that was the proper Time, if they had any Thing to requeſt of the Houſe. Whereupon the Earl of *Wintoun* deſired he might have a Copy of the Articles, and Time to anſwer, and Council aſſign'd him. Accordingly a Copy was order'd him, and Time to anſwer till *Saturday* following, and that Council ſhould be aſſign'd him; and his Lordſhip deſiring that Time might be allow'd him to name his Council, the Houſe allow'd him to name a Solicitor as well as Council, and gave him leave to name whom he deſir'd to come to him in the Evening, or next Morning, in order to adviſe him in the naming of them. He thereupon named Mr. *Hereot* a Clergyman, Mr. *Menzies*, Major *Sinclair*, and Mr. *Leſley* a Lawyer; and it was order'd they might repair to the ſaid Earl at any Time, before the ſitting of the Houſe the next Day.

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And to name his Counſel and Solicitors.

It was further order'd, that any of the impeach'd Lords might have Copies of any Records or Journals for their Defence, and Summons for their Witneſſes, who ſhould have the Protection of the Houſe for their ſafe coming and going, during the Tryals.

On *Thurſday* the 12th of *January* a Petition from the ſaid Earl was preſented to the Houſe, praying further Time to name his Council and a Solicitor, Sir *Thomas Powis* and Mr. *Mead* having refus'd to appear for him; whereupon Time was given him until

until Eleven o' Clock the next Day: And upon the Requeſt of the Earl of *Derwentwater*, and the Lord *Widdrington*, it was order'd, That all the impeach'd Lords have Time to put in their Anſwers till *Monday* next.

On *Monday*, the 16th of *January*, it was order'd, That in regard the Counſel aſſign'd ſome of the Lords, refus'd to be concern'd for them, *Thurſday* next be appointed peremptorily for them to put in their Anſwers.

The Lord *Wintoun* being brought to the Bar on *Thurſday* the 19th of *January*, and asked if he was ready to put in his Anſwer, he deliver'd a Petition, ſhewing, That their Lordſhips Order for allowing certain Perſons to come to him expiring on *Friday* laſt, he had no Opportunity of naming other Counſel and Solicitors, ſince thoſe he named formerly had refus'd to be employ'd; and therefore prayed that Sir *Conſtantine Phipps* and Mr. *Peer Williams* might be aſſign'd him for Counſel, and *Charles Menzies* and Mr. *James Leſlie* for Solicitors; and that Mr. *George Hereot*, a Clergyman, might have Acceſs to him. Whereupon it was order'd, That the Counſel mention'd in the ſaid Petition be aſſign'd him, and either of the ſaid Solicitors; and that he have Time to put in his Anſwer till *Monday* next; and that the Clergyman, mention'd in the Petition, may have Acceſs to him, provided he ſtay in Cuſtody with him during his Confinement. After which the Earl, having named *Menzies* for his Solicitor, withdrew.

A Petition for further Time. Vol. vi. p. 19.

The Earl petitioning the Houſe again on *Saturday*, the 21ſt of *January*, for further Time to put in his Anſwer, the Petition was rejected.

The Earl being brought to the Bar on *Monday* the 23d of *January*, and ſtill deſiring further Time to put in his Anſwer, was acquainted, That he had been indulg'd more than any other of the impeach'd Lords; and that this being the peremptory Day for putting in his Anſwer, the Houſe would allow him no further Time; and the Conſequence of his refuſing to plead in Law was, That Judgment wou'd be awarded againſt him, as if he had pleaded Guilty. Whereupon he deliver'd in his Anſwer fairly engroſſed in Parchment.

On *Saturday*, the 28th of *January*, the Commons reply'd to the Earl's Anſwer; and on *Wedneſday*, the 8th of *February*, the Lords appointed *Thurſday* the 16th Inſtant for the Tryal of the ſaid Earl at the Bar of the Houſe in *Weſtminſter-Hall*.

Upon reading the Petition of *George* Earl of *Wintoun* on *Friday*, the 10th of *February*, deſiring, That Regard might be had to the Diſtance of the Place and Seaſon of the Year, for bringing up of his Witneſſes from *Scotland*, and other Parts; and that the Houſe wou'd grant him an Order to compel his Witneſſes to come up, and give Evidence at the Tryal on the Behalf of the Petitioner; it was order'd, That the Time for the Tryal of the Petitioner be enlarg'd to *Thurſday*, the 8th of *March* next; and that the Witneſſes, named by the Petitioner, be required to attend the Houſe at the ſame Time, except ſuch as were Priſoners for High-Treaſon; and that they have the Protection of the Houſe for their ſafe Coming and Going during the Tryal.

Vol. vi. p. 20. Upon reading a Petition of the ſaid Earl's on *Monday*, the 5th of *March*, ſhewing, That his Agents had us'd all poſſible Dilligence in ſerving the Order of the Houſe for the Attendance of his Witneſſes, and that they were all on their Way hither, either by Land or Sea; and that if they were already arriv'd, the Time wou'd be too ſhort to prepare his Briefs and inſtruct his Counſel; and praying therefore that the Time appointed for the Tryal might be enlarg'd; it was order'd, That the Tryal be on the 15th of this Inſtant *March*.

Upon reading another Petition of the Earl's on *Monday*, the 12th of *March*, ſhewing, That Four of his moſt material Witneſſes were not arriv'd, being lame and infirm, and ſo not able to travel with Expedition; and therefore praying that the Time for his Tryal might be enlarg'd; *Charles Menzies*, the Petitioner's Solicitor, was call'd in, and examin'd upon Oath concerning the Allegations of the ſaid Petitioner; and he failing to make good the ſame, the Petition was rejected.

On *Wedneſday*, the 14th of *March*, another Petition of the Earl's was read, praying that Mr. *Ketleby* and Dr. *Strahan* might be added to his Council: It was order'd, That they be aſſign'd the Petitioner, to be heard as to Matters of Law only.

A

A Motion alſo being made, That certain other Perſons, whoſe Names were exhibited in a Liſt on Behalf of the Priſoner, might be ſummon'd as Witneſſes at the Tryal, they were order'd to attend accordingly at *Weſtminſter-Hall* To-morrow at Ten in the Forenoon.

The Earl deſiring alſo that General *Carpenter*, a Member of the Commons, might be examin'd alſo as a Witneſs at the Tryal, a Meſſage was ſent to the Commons, that they wou'd give the General Leave to be examin'd, it was comply'd with.

It was order'd alſo, That the Witneſſes, produc'd on behalf of the Earl, ſhou'd be examin'd upon Oath; and that the Oath to be adminiſtred on both Sides ſhou'd be this,

THE Evidence which you ſhall give at this Tryal, concerning George *Earl of* Wintoun, *Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth.*

So help you God, and the Contents of this Book.

About One o' Clock on *Thurſday*, *March* 15th, $17\frac{1}{16}$. the Lords came from their Houſe to the Court erected in *Weſtminſter-Hall*; when the Lords being placed in their proper Seats, and the Lord High-Steward on the Wool-Pack, the Clerk of the Crown in Chancery made three Reverences to the Lord High-Steward, and preſented him with his Commiſſion. After which it was carried to the Table, and read, all the Peers ſtanding up uncover'd while the Commiſſion was reading.

The firſt Day's Tryal. Vol. vi. p. 21.

The COMMISSION.

Georgius Rex,

GEORGIUS, Dei Gratia Magnæ Britanniæ, Franciæ, & Hiberniæ Rex, fidei Defenſor, &c. Prædilecto & fideli Conſiliario noſtro Willielmo Domino Cowper, Cancellario noſtro Magnæ Britanniæ, Salutem. Cum Georgius Comes de Wintoun, cum aliis coram Nobis in præſenti Parliamento per Milites, Cives, & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione per ipſum Georgium Comitem de Wintoun,

& al' commis' & perpetrat' in nomine ipſorum Militum Civium & Burgenſium & nomine omnium Communium Regni noſtri Magnæ Britanniæ impetit' & accuſat' exiſtit: Nos conſiderantes quod Juſtitia eſt virtus excellens, & altiſſimo complacens volenſq; quod prædict' Georgius Comes de Hintoun, de & pro Proditione unde ipſe ut præfertur impetit' accuſat' exiſtit coram Nobis in præſenti Parliamento noſtro ſecundum Leg' & Conſuetudin' hujus Regni noſtri Magnæ Britanniæ & ſecundum Conſuetudinem Parliamenti audiatur ſententietur & adjudicetur cæteraq; omnia quæ in hac parte pertinent debito modo exerceantur & exequantur ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro aſſemblat' Nobis humilime ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac vice conſtituere dignaremur. Nos de fidelitate, prudentia, provida circumſpectione & induſtria veſtris plurimum confidentes Ordinavimus & Conſtituimus vos ex hac cauſa Seneſcallum Magnæ Britanniæ ad Officium illud cum omnibus eidem Officio in hac parte debit & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmiſſa deligenter intendatis & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertin' & requiruntur, hac vice faciotis, exerceatis & exequamini cum effectu. In cujus rei Teſtimonium has Literas, noſtras fieri fecimus Patentes, Teſte me ipſo apud Weſtm' decimo-quinto die Martii Anno Regni noſtri Secundo.

Per ipſum Regem propria Manu Signat'

WRIGHTE.

Then the Herald, and Gentleman Uſher of the Black Rod, after three Reverences kneeling, preſented the White Staff to his Grace; who being attended by the Herald, Black Rod, and Seal-Bearer, (making his proper Reverences towards the Throne,) remov'd from the Wool-Pack to an Armed-Chair, placed on the uppermoſt Step but one of the Throne; after which, a Proclamation was made for Silence, and another for the Lieutenant of the *Tower* to bring his Priſoner to the Bar.

Then the Earl was brought to the Bar by the Deputy-Lieutenant of the *Tower*, the Ax being carry'd before him, with the Edge turn'd from him: The

Priſoner

Priſoner, after kneeling, bow'd to the Lord High Steward, and to the Houſe of Peers; which Compliment being return'd him, and another Proclamation made for Silence, the Lord High Steward ſpake to the Priſoner to this Effect.

Lord High Steward's Speech. Vol. vi. p. 22.

"THAT nothing cou'd be a greater Support to his "Mind, (if not conſcious of Guilt,) than to con- "ſider that he was to be Try'd by the whole Body "of Peers in Parliament aſſembled; from whence "he might be aſſur'd, that Juſtice wou'd be admi- "niſter'd to him, not only with that common De- "gree of Compaſſion which Humanity itſelf de- "riv'd to People in his Condition, but with that ex- "traordinary Concern for him, which naturally "flow'd from a Party of Circumſtances common "to himſelf and his Judges, (the Charge againſt "him excepted.)

"But he muſt not hope, if he was clearly prov'd "Guilty, that their Lordſhips, who were under "the ſtrongeſt Obligations to do Right that cou'd "be laid on noble Minds, namely, their Honour, "wou'd not break through all the Difficulties that "unmerited Pity might put in their Way to do Ju- "ſtice upon him.

"That as his Lordſhip wou'd not be interrupted "in his Defence, he muſt attend with Patience till "the Managers for the Commons had produc'd their "Evidence againſt him; but when a Witneſs had "been examin'd by the Commons, his Lordſhip "ſhould croſs-examine him before another ſhould "be call'd.

"That his Council were not to croſs-examine "the Witneſſes, or give him any Aſſiſtance publick "or private, while Matter of Fact only was in "queſtion; but if Matter of Law aroſe, they might "ſpeak to it, and were permitted to be within hear- "ing for that End.

"That his Lordſhip was the firſt, who, on an "Impeachment of High-Treaſon, wou'd have the "Benefit of the Law made in the firſt Year of the "late Queen *Anne*, for the examining the Witneſſes "for the Priſoner upon Oath; whereby his Wit- "neſſes wou'd be intitled to the ſame Degree of "Credit as the Witneſſes produc'd againſt him.

" That his Lordſhip, if he deſir'd it, might have " Pen, Ink, and Paper, to take Notes for his De- " fence, and if he omitted any Thing that was ma- " terial for his Defence, his Grace wou'd put him " in Mind of it. And that when he had occaſion " to ſpeak, he was to addreſs himſelf to the Lords " in general, and not to any particular Lord."

After which the Lord High Steward commanded the Articles of Impeachment, the Earl's Anſwer, and the Replication of the Commons to the ſaid Anſwer, to be read; and they were read accordingly, and are as follows;

The Articles of Impeachment.

THE Articles ſet forth, That whereas for many Years paſt a wicked Deſign had been carried on to ſubvert the Government, and extirpate the Proteſtant Religion, and to introduce Popery and Arbitrary Power, in which great Numbers of Perſons had been concerned, and many Proteſtants, pretending Zeal for the Church of *England*, had join'd with profeſs'd Papiſts, to accompliſh the ſaid Traiterous Deſign.

And whereas God was pleaſed to crown the unwearied Endeavours of King *William* the Third, in procuring the Settlement of the Crown in the Houſe of *Hanover*, being the only Means to preſerve our Religion, Laws, and Liberties, and to ſecure the Proteſtant Intereſt in *Europe*; ſince which Eſtabliſhment the Conſpirators had endeavour'd to deſtroy the ſame, to make way for an Impoſtor and Popiſh Pretender to theſe Crowns.

And to accompliſh theſe Ends, eſpecially in the laſt Years of Queen *Anne*, all Endeavours were us'd by the ſaid Conſpirators to prejudice the Minds of the Subjects againſt the ſaid Settlement, the Holy Scriptures and the Doctrines of the Church were wreſted and perverted by Men in Holy Orders, to condemn the Revolution, and thereby undermine the ſaid Settlement; and thoſe wicked Inſtruments countenanc'd by Marks of publick Favour; falſe Notions of Hereditary Right were propagated by Perſons in the higheſt Poſts; Jeſuitical Diſtinctions invented to enervate the force of the Oaths; and the better to conceal their Deſigns, great Numbers of the Conſpirators of all Ranks took the ſaid Oaths; while

while groundleſs Fears of the danger of the Church were fomented to diſorder the Minds of well-diſpos'd Proteſtants. Vol. vi. p. 23.

And whereas the Diſſolution of the late Confederacy againſt *France*, and the Loſs of the Ballance of Power in *Europe*, were neceſſary to compleat the Deſigns of the Conſpirators; and theſe being effected by the late ignominious Peace with *France*, the French King rendered formidable, and the Proteſtant Succeſſion thereby brought into Danger.

At which Time, and in ſuch deplorable Circumſtances, it pleas'd God to take off the late Queen *Anne*, and by many wonderful Providences to bring his Majeſty quietly to the Throne of his Anceſtors, to which he was receiv'd with one full Voice and Conſent of every good Subject as their only Leige Lord: And altho' his Majeſty's Reign had been one Series of Wiſdom, Juſtice, and Clemency, and he had with unwearied Labours endeavour'd to retrieve the Honour of the Nation, and re-eſtabliſh Trade; and altho' he had given all Encouragement to the Church of *England*, and tenderly us'd his Popiſh Subjects, nevertheleſs the ſaid Conſpirators had renew'd their Endeavours to throw theſe Kingdoms into Confuſion, by repeating the aboveſaid wicked Practices, and fomenting groundleſs Jealouſies of his Majeſty's Adminiſtration, incited Riots and Tumults againſt his Majeſty's peaceable Proteſtant Subjects, under pretence of Zeal for the Church, thereby ſeducing the People from their Allegiance and preparing them for an open Rebellion.

The ſaid Conſpirators, to deprive the Nation of the Bleſſings they now enjoy under his Majeſty, did contrive and reſolve to put their ſaid Traiterous Deſigns in Execution; for which Purpoſe, *George* Earl of *Wintoun*, and divers others, as falſe Traytors to his Majeſty King *GEORGE*, having withdrawn their Allegiance which they ow'd to him, did in or about the Months of *September*, *October*, or *Novembsr*, 1715. malicioufly, falſly, and traiterouſly imagine and compaſs the Death of his ſaid Majeſty.

And to accompliſh their ſaid Treaſons, the ſaid *George* Earl of *Wintoun* did, in or about the ſaid Months, or ſome of them, and at divers other Times, and in divers Places in this Kingdom, traiterouſly,

terouſly conſpire and reſolve, with other evil diſpos'd Perſons, to levy War within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County-Palatine of *Lancaſter*, and elſewhere, within this Kingdom, in order to depoſe and murther his ſaid Majeſty, and deprive him of his Royal State, Crown, and Dignity,

And that the ſaid Earl and his Confederates, at the Times and Places aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and did aſſemble with them in a traiterous and warlike Manner, in order to raiſe Tumults and Rebellions within this Kingdom; and having procur'd great Quantities of Arms, Ammunition, and warlike Inſtruments, did form or compoſe, or aſſiſt in the forming and compoſing an Army of his Majeſty's Subjects, in order to wage War againſt his Majeſty in behalf of the Pretender; and at the ſaid Times and Places did maliciouſly and traiterouſly levy War and Rebellion againſt his Majeſty; and in a hoſtile Manner did march through and invade ſeveral Parts of this Kingdom, and ſeize the Horſes and Goods of his Majeſty's peaceable Subjects, taking from them Guns, and other warlike Inſtruments, for carrying on their traiterous Purpoſes.

Vol. vi. p. 24.

That the ſaid Conſpirators, during their March and Invaſion aforeſaid, did traiterouſly cauſe the ſaid Pretender to be proclaimed as King of theſe Realms; and did take and ſeize from the Officers of the Revenue the publick Money for his Uſe; and did procure ſeveral Men in Holy Orders, Miniſters of the Church of *England*, who had abjur'd the ſaid Pretender, to accompany and countenance the ſaid traiterous Enterprize, and to pray for the ſaid Pretender in publick Churches.

That the ſaid Conſpirators, on or about the 9th, 10th, 11th, 12th, or 13th Days of *November*, aforeſaid, did traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton* in the County-Palatine of *Lancaſter*, and there in a hoſtile Manner levy War, and engage his Majeſty's Forces, cauſing a horrid Slaughter and Murther of many of his Majeſty's Subjects.

All which Treaſons and Crimes were contriv'd and perpetrated againſt the King, his Crown and Dignity,

Dignity, and contrary to their Duty and Allegiance and the Laws and Statutes of the Realm; of all which Treaſons, the ſaid Knights, Citizens, and Burgeſſes in Parliament aſſembled, do, in the Name of themſelves, and all the Commons of *Great Britain*, impeach the ſaid Earl; and pray he may be put to anſwer all and every the Premiſes; and that ſuch Proceedings, Examinations, Tryals, and Judgments, may be had thereupon, as ſhall be agreeable to Law and Juſtice.

The Anſwer of the Earl of *Wintoun*, to theſe Articles, was to this Effect:

THAT though it might be preſum'd, from his being taken with thoſe who were in Arms againſt the Government, he was equally guilty with them; yet when it ſhould appear, That the Circumſtances of his Caſe was different from theirs, he did not doubt but their Lordſhips would diſtinguiſh him in Judgment. He obſerves, That he was deſcended from a noble Family, never polluted with Treaſon; and that he never degenerated from his Anceſtors ſo far as to form a Deſign againſt the Conſtitution: That he was ſo cautious of giving Offence to the Government, that on his Return from his Travels he confined himſelf to his Houſe, keeping no Correſpondence by Letters with any Perſon whatſoever; and yet he could not be quiet or ſafe there. The Officers of the Militia ſeveral Times forcibly entered his Dwelling-Houſe by Night, and rifled it; broke into his Chappel, and defaced the Monuments of his Anceſtors, abuſing their dead Bodies in the Tombes: That both the Dragoons and *Militia* had kept guard in his Houſe, and Cannon were brought to demoliſh it: Whereupon he was forced to ſeek for Shelter among his Tenants and Neighbours; and was at laſt unfortunately driven into the Company of ſome of the Gentlemen impeached with him: But affirms he joined them only with an Intention to preſerve himſelf, and not with any traiterous Deſign: That he was not admitted into their Secrets, nor had any Thoughts of leaving his Country, or of marching into *England*; and did not diſcover his being there till it was too late for him to return to *Scotland* alone, without the utmoſt

The Earl's Anſwer.

Vol. vi. page 25.

moſt Hazard: That although he was conſtrained to keep the other Lords and Gentlemen Company, he never joined with them in any Act of Hoſtility or Violence, or countenanced them therein: That he did not ſo much as fire a Piſtol at *Preſton*, or elſewhere, but ſurrendered himſelf to General *Wills*, with the reſt; and conſcious of his own Innocence, anſwers to the Impeachment, *That he was not Guilty*. And for his Tryal, puts himſelf on their Lordſhips, begging they would believe his Anſwer proceeded from the Senſe he had of the Truth of it, and not from any Obſtinacy, or Intention to give any unneceſſary Trouble, or any Doubt he had of his Majeſty's Clemency; but if it ſhould appear that he had committed any Act, which in the Rigour of the Law might be conſtrued High-Treaſon, he hoped the Innocence of his Heart, and Ignorance of the Law, through their Lordſhip's Interceſſion, would render him an Object of his Majeſty's Mercy; which they were encouraged to depend upon when they ſurrendered, and ſubmitted himſelf to their Lordſhips Wiſdom and Judgment.

To the Anſwer of *George* Earl of *Wintoun*, the Commons reply'd,

"THAT they did aver their Charge againſt the ſaid "Earl for High-Treaſon to be true; and that the "ſaid Earl was guilty of High Treaſon in the Man-"ner he ſtood impeach'd; which they were ready to "prove."

The Articles, Anſwer, and Reply, having been read, the Lord High-Steward deſir'd Leave of the Lords to remove from his Seat to the Table, the Diſtance from the Bar being ſo great; which their Lordſhips complying with, the Lord High-Steward then directed the Commons to proceed. Whereupon Mr. *Hampden*, one of the Managers, opened the Articles, Anſwer, and Evidence. He ſaid,

Mr. *Hampden* opens the Articles.

"THAT they appeared there in the Behalf "of the Commons of *Great Britain*, to "make good the Impeachment of High Treaſon "againſt the Priſoner: That the Commons being "juſtly alarmed with the Dangers the Nation had "been

" been expoſed to by the late unnatural Rebellion, Vol. vi. p. 26.
" thought it incumbent on them to enquire into the
" Authors and Promoters of ſo pernicious an At-
" tempt, to deprive theſe Nations of the invaluable
" Bleſſings they enjoyed under the wiſe and gentle
" Reign of his Majeſty, contrived and carried on
" with an Intent to depoſe and murder him, and ſet
" up a popiſh Pretender, and conſequently to change
" the Conſtitution, and introduce a ſlaviſh arbitrary
" Government: That the Earl of *Wintoun* appear-
" ing to have been deeply engaged in the late Re-
" bellion, they had brought this Offender to their
" Lordſhips Bar, and exhibited Articles of Impeach-
" ment againſt him. [*Here he repeated the Sub-*
" *ſtance of the foregoing Articles, and of his Lordſhip's*
" *Anſwer*; *adding*,] That notwithſtanding what
" was mentioned in the Earl's Plea, and the ſpecious
" Explanation he had given to ſuch Proceedings of
" his, as were a Foundation to the Commons to in-
" clude him with the other Lords, they made no
" doubt of ſhewing the Fallacy and Inſufficiency
" of his Plea, and make it appear, that there was no
" leſs contained in their Accuſation of his Lordſhip,
" than what the Law, the Light of Nature, and the
" Rules of Society diſapproved and condemned.

" That the Commons, vigilent for the Safety of
" his Majeſty, and the Liberties of the People, could
" not anſwer it to God or their Country, if they
" neglected to exert themſelves in bringing to exem-
" plary Juſtice the declared Inſtruments of this Re-
" bellion: And it was their Satisfaction, that what-
" ever Miſrepreſentations other Proſecutions might
" have been formerly liable to, the Notority of this
" Rebellion was ſo evident, that the moſt malicious
" of their Enemies had not the Confidence to deny
" it.

" They were not ſurpriz'd to find *Papiſts* engaged Vol. vi. p. 27.
" in this Rebellion, ſince they maintained it to be
" lawful to kill an heretical Prince, (as they eſteem-
" ed his Majeſty,) declaring that ſuch a Piece of
" Service was not only lawful, but pious and agree-
" able to God: But how Proteſtants could be infa-
" tuated to ſuch a Degree, as to believe that the moſt
" effectual Way to ſerve the Church, was to bring
" in a Popiſh Prince to reſcue it from the Proteſtant
" Succeſſion; and how it could enter into their
" Hearts

" Hearts to act in Conjunction with the avow'd " Enemies of their Religion and Liberties, was not " to be accounted for.

" No leſs was to be the Sacrifice than his Majeſ- " ty, and the Royal Family, a Succeſſion of Princes " appointed by divine Providence to be the Guar- " dians of the Proteſtant Intereſt in *Europe*, and " their preſent happy Conſtitution, to appeaſe the " Fury of Papiſts, and Proteſtants aſſociated with " them in this Rebellion.

" Had the Rebellion taken place, this Nation, the " Glory of the Reformation, the moſt ſubſtantial " Bulwark againſt Popery, had fallen a Victim to " Bigotry, Superſtition, and Slavery, the pernicious " and neceſſary Conſequences of introducing a Re- " ligion void of natural Senſe, and natural Con- " ſcience: That if an Attempt to ſubvert the Go- " vernment, to deſtroy the King, and ſet up a *Popiſh* " Pretender; if marching in a Hoſtile Manner, and " carrying on a deſtructive War in the Bowels of " the Nation, were only Acts of Surprize and In- " advertency, any Rebellion might be palliated and " excuſed, ſince ſcarce any Circumſtances could " be added in Aggravation of that which had been " lately raiſed in this Kindom."

Sir *Joſeph Jekyll.* Sir *Joſeph Jekyll*, another of the Managers, alſo was aſſign'd to open the Charge contain'd in the Articles, the Anſwer, and the Evidence. He obſerved,

Vol. vi. p. 28. " THAT the Overt-Acts of the Treaſon con- " tain'd in the Articles, might be reduced to theſe " Heads: 1. A Conſpiracy of the Earl of *Wintoun* " and his Accomplices to levy War, with an In- " tent to depoſe the King; and that ſuch a Conſpi- " racy had been held a ſufficient Overt-Act of com- " paſſing and imagining the Death of the King. " 2. His Lordſhip joining with his Accomplices in " proclaiming the Pretender; which was endea- " vouring to ſet another Prince upon the Throne. " And, 3. The levying War againſt the King with " an Intent to depoſe him; which might ſerve for " an Overt-Act of the other Species, of compaſ- " ſing and imagining the King's Death: For though " it was reckoned, in the Statute of 25 *Edw.* III.

" as

" as a diſtinct Treaſon, yet it did not thereby ceaſe " to be of the Nature of an Overt-Act, of compaſ- " ſing and imagining the King's Death, which it " was, antecedent to its being declared a diſtinct Spe- " cies; and this Point was ſupported by Authori- " ties, and many Attainders had been upon it.

" As to his Lordſhip's Plea, That he was unfor- " tunately driven into the Company of the Gentle- " men named in the Impeachment, and that he on- " ly joined them with an Intention to preſerve him- " ſelf; his Caſe was not at all like that in my Lord " Chief Juſtice *Coke*'s *Firſt Inſtitutes*, *Fol.* 10. on " an Impeachment for High Treaſon, where ſeveral " Perſons had join'd Sir *John Oldcaſtle*, then in open " Rebellion, *pro timore mortis*, & *quam cito potue- " runt receſſerunt*; and who were thereupon acquit- " ted: For here my Lord did not pretend that any " Force was put upon him when he went and join- " ed the Rebels. His Lordſhip's Defence, therefore, " was a weak and doubtful one. It was far from " the Commons, however, to deſire to convict his " Lordſhip by any Infirmity in his Defence, or by " any other Means, but by the Strength and Clear- " neſs of the Evidence they ſhould produce.

" That he could not but take notice, if this hea- " vy Accuſation was proved againſt the Lord at the " Bar, it was a ſtrange Notion of Loyalty, ſo much " boaſted of in his Anſwer, which he had been plea- " ſed to entertain.

" That Loyalty was a faithful and dutiful Obe- Vol. vi. p. 29. " dience to the King, under the Sanction and Direc- " tion of the Law; and whoever caſts the Law out " of the Idea of Loyalty, they looſened the Bands " of Allegiance: For it was the Law that bound " upon the Conſcience of the Subject the Faith and " Allegiance he ow'd to his Sovereign, as it did up- " on the Conſcience of the Sovereign that Juſtice " and Protection he afforded his Subjects."

Mr. *Attorney-General*, another of the Managers, being appointed alſo to open the Charge and the Evidence, ſaid, Sir *Edward Northey*, Attorney-General.

" THAT the Earl was charged with two Spe- " cies of Treaſon mentioned in the Statute of " 25 *Edw.* III. 1. The compaſſing and imagining " the Death of the King; and, 2. The levying War

" againſt

" againſt the King within his Realm. That the Evi-
" dence that would be a Proof of the latter Treaſon,
" would alſo prove the former: For levying War
" to depoſe the King, was an Overt-Act of conſpi-
" ring the Death of the King. And he could not
" but obſerve on the Preamble to the Earl's Plea,
" that it directly contradicted his Plea of *Not Guil-*
" *ty*; and that if what he alledged was taken as true,
" he therein owned himſelf guilty, though from
" thence he concluded, *That he was not Guilty.*

" That in *September* laſt, the Earl of *Marr*, in *Perth-*
" *ſhire*, and in the Beginning of *October*, Mr. *For-*
" *ſter*, with ſome of the attainted Lords in *Nor-*
" *thumberland*, with great Numbers of armed Men,
" rais'd a Rebellion in favour of the Pretender,
" proclaim'd him King, and ſet up his Standard:
" That about the 7th or 8th of *October* laſt, the
" Earl of *Wintoun* left his Seat at *Seaton*, in the
" County of *Lothian*, armed with a Broad-Sword
" and Piſtols, and carried with him Fourteen or Fif-
" teen of his Servants, well mounted, and ſo arm'd;
" and about the 10th of *October* join'd the Earl of
" *Carnwath* and the Lord Viſcount *Kenmure* at
" *Moffet*, in the County of *Annandale*; and there
" they formed a little Army, which was command-
" ed by the Lord *Kenmure*, till they join'd *Forſter:*
" That the Lord *Wintoun* form'd a Troop with his
" own Servants and others, and it was call'd his
" Troop; and from that Time commanded a Squa-
" dron, till he and the reſt ſurrender'd at *Preſton:*
" That about the 20th of *October* they join'd *For-*
" *ſter* and his Rebels at *Wooler*, &c.

[*The reſt of the Evidence will be found at large, in the following Depoſitions of the Witneſſes.*]

Mr. *Attorney* concluded with obſerving, " That
" the Earl had alledged in the Preamble of his Plea,
" that he never ſhot off a Piſtol: But that was not
" material; for aſſembling and marching in a ho-
" ſtile Manner for a publick Purpoſe, and oppoſing
" the King's Forces, was levying War, altho' the
" Lord accus'd never ſhot off a Piſtol."

[*Then the Managers proceeded to call their Witneſſes; and, firſt, Mr.* William Calderwood, *Quarter-Maſter to the Rebels, was ſworn.*]

Sir

Sir *Jo. Jekyll.* Give an account what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it. Calderwood's Evidence.

Calderwood. Upon the 11th of *October*, 1715. I went with about 70 Horſe to join the Lord *Carnwath*, Lord *Wintoun*, Lord *Kenmure*, at *Moffet*, where they had aſſembled about an hundred and fifty Men. Vol. vi. p. 31.

Att. Gen. About what Time did the Priſoner at the Bar come in?

Calderwood. Towards the Evening of the 11th of *October*; and brought with him about fourteen Men, moſt part of them arm'd with Sword and Piſtol.

Sir *Jo. Jekyll.* When the Lord at the Bar join'd the Rebels, what did they do?

Calderwood. They went to *Lockmaben*; where the Pretender was proclaimed the next Day, the Lord at the Bar aſſiſting at the Proclamation, with his Sword drawn on Horſe-Back.

Att. Gen. Whence did you march from thence?

Calderwood. To *Auchtelfechen*: From thence to *Langholm*; and afterwards to *Hawick*, where the Pretender was proclaim'd, the Lord *Wintoun* being preſent at the Proclamation.

Sir *Jo. Jekyll.* Whence did you go from thence?

Calderwood. To *Jedburg*, where the Pretender was proclaim'd; the Earl of *Wintoun*, *Carnwath*, and all the Lords being preſent.

Att. Gen. Where did you march then?

Calderwood. To *Rodberry*; where we were join'd by General *Forſter*.

Att. Gen. How long did you ſtay there?

Calderwood. Two Nights: And thence we marched to *Wooler*; and from thence to *Kelſoe*, where we were join'd by the *Highland* Foot, commanded by Brigadier *Mackintoſh*.

Sir *Jo. Jekyll.* Whither did you go from *Kelſoe*?

Calderwood. Back again to *Jedburg*; and from thence to *Hawick*, and to *Langholm*.

Att. Gen. What happened at *Langholm*?

Calderwood. Five or ſix hundred of the *Highland* Foot went from us.

Att. Gen. Did the noble Lord at the Bar attempt to go off with them?

Calderwood. No. At *Jedburg* the Earl of *Wintoun* went up to them, to make them come back: They

Vol. vi. p. 32. They wou'd have no Body come to them but the Priſoner.

Att. Gen. Did he declare any Thing after his Return about their going off.

Calderwood. I heard him ſay at *Langtown*, it was not his Fault they were gone off.

Att. Gen. Might not my Lord *Wintoun* have gone off with them, if he wou'd?

Calderwood. Yes, he might.

Att. Gen. Whether did you go from *Langtown*?

Calderwood. To *Brampton*, to *Penrith*, to *Appleby*, to *Kendall*, and to *Kirby Lonſdale*.

Att. Gen. What happened there?

Calderwood. The Pretender was proclaim'd at the two laſt Places, the Earl of *Wintoun* preſent.

Sir *Jo. Jekyll.* Whither did you go from thence?

Calderwood. To *Lancaſter*, where the Pretender was proclaim'd, the Earl of *Wintoun*, *Kenmure*, *Carnwath*, and *Nithiſdale*, being preſent.

Sir *Jo. Jekyll.* How did they enter the Town of *Lancaſter*?

Calderwood. Sword in Hand.

Att. Gen. Was there any Arms or Guns ſeized there?

Calderwood. Yes; ſix great Guns, which they took from a Ship: They carried them to *Preſton*, and mounted them there.

Mr. *Cooper.* Was you at Church at *Lancaſter*? and who was prayed for there?

Calderwood. The Pretender was prayed for in the Pariſh Church of *Lancaſter*.

Mr *Cooper.* Whither did you go from *Lancaſter*?

Calderwood. After we had ſtaid two Nights at *Lancaſter*, we went to *Preſton*; where we arriv'd the Ninth and Tenth Day of *November*.

Mr. *Cooper.* Did the Horſe and Foot arrive the ſame Day?

Calderwood. The Horſe came in on a *Wedneſday*, the Foot on *Thurſday*.

Att. Gen. Had you any Diſtinction between the *Scotch* and *Engliſh* by Cockades?

Calderwood. Yes; the *Scotch* had Blue and White; and the *Engliſh* Red and White.

Att. Gen. Did the noble Lord meddle with any Cockade?

Calderwood.

Calderwood. The Earl of *Wintoun* had a Cockade at *Hawick*; and took ſeveral of them from my Hands, and gave them away as he ſaw fit.

Sir *Jo. Jekyll.* You ſaw the Earl of *Wintoun* at *Preſton*, when the King's Forces came thither: Do you remember what paſſed afterwards?

Calderwood. I ſaw him: He had Sword and Piſtols; he was a-foot in the Church-Yard, where there were both Horſe and Foot drawn up.

Sir *Jo. Jekyll.* While my Lord was in Company, and in this March, was there any Troops form'd?

Calderwood. Yes; my Lord *Wintoun* had the firſt, conſiſting partly of Gentlemen, and partly of his own Servants.

Sir *Jo. Jekyll.* By whom were they paid?

Calderwood. By my Lord *Wintoun*: He paid them two Shillings a Day.

Sir *Jo. Jekyll.* In what Manner was the Troop accoutred?

Calderwood. Very well, with Swords and Piſtols. He had five Servants in Liveries; the reſt were domeſtick Gentlemen.

Att. Gen. Did my Lord command only that, or any other Body? Vol. vi. p. 33.

Calderwood. He commanded a Squadron.

Sir *Jo. Jekyll.* Did my Lord diſcover any Uneaſineſs in the March, or ſeek any Opportunity of leaving them?

Calderwood. Never, that I know of.

Sir *Jo. Jekyll.* I think you quarter'd him: Did he complain of his Quarters at any Time?

Calderwood. He order'd me to give him good Quarters; which I did.

Att. Gen. What happened at *Preſton*? when did the King's Forces come thither?

Calderwood. We came on *Wedneſday*; they came on *Saturday*: We defended the Town two Nights, and ſurrendred on *Monday*.

Att. Gen. Did the King's Troops attack it, and demand a Surrender?

Calderwood. Yes; and we defended it.

Sir *Jo. Jekyll.* How was it defended?

Calderwood. We barricaded every Street: And had two Cannon in each Street.

Att. Gen. What Share did my Lord *Wintoun* bear in the Defence of it?

Calderwood. I ſaw him go towards the Church-Yard, where there was a Body of Men.

Sir *Jo. Jekyll.* When my Lord join'd them, and in their March, was there any Money rais'd?

Calderwood. They rais'd a Tax, as they call'd it, a Ceſs.

Sir *Jo. Jekyll.* We have done with this Witneſs. If my Lord will ask him any Queſtions, he may.

L. Winton. I cannot examine him; I deſire my Council may examine him.

L. H. Steward. Your Counſel are not to aſſiſt your Lordſhip in croſs-examining the Witneſſes: You may examine them your ſelf, by propoſing your Queſtions, and they will be ask'd by the Court.

L. Wintoun. I never examin'd a Witneſs in my Life: I deſire my Council may do it for me.

L. H. Steward. Have you any Queſtion you deſire to be ask'd, and it ſhall be asked?

L. Wintoun. I deſire my Council may ask for me. It is hard to have none to ſpeak for me; and there are twenty againſt me.

[*Proclamation made for Silence as uſual.*]

Sir *Jo. Jekyll.* My Lords, if the Lord at the Bar doth not think fit to ask this Witneſs any Queſtion, nor your Lordſhips, we muſt call another.

L. H. Steward. Did the Earl join in cauſing the Pretender to be proclaim'd? or did he ſeem to diſlike it?

Calderwood. No, my Lord; he was always among the reſt.

[James Lindſey *was ſworn.*]

Lindſey's Evidence.

Att. Gen. We deſire he may give your Lordſhips an Account, whether he was at *Moffet* when the Pretender was proclaim'd; and what Share my Lord *Wintoun* had in it.

Lindſey. I ſaw the Lord *Wintoun* firſt at *Moffet*; the ſecond Time I ſaw him at *Jedburg*; the third Time at *Kendall*; and the laſt at *Preſton*.

Sir *Jo. Jekyll.* What happened at any of theſe Places?

Vol. vi. p. 34. *Lindſey.* The firſt Time I ſaw him, he was riding on a grey Horſe, mounted with Sword and Piſtol;

Piſtol; the ſecond Time ſitting with the Guard; and at *Kendall*, when he was coming out of Town, ſaw him riding on Horſe-back; and at *Preſton*, ſaw him riding in the Market-Place with other Gentlemen.

Sir *Jo. Jekyll.* Was there any Proclamation made at any of theſe Places?

Lindſey. Yes; at *Jedburg*, they told me, they proclaim'd the Pretender. I heard the Voice, but not the Words pronounc'd.

Sir *Jo. Jekyll*, Was the Priſoner at the Bar there?

Lindſey. I did not ſee him.

Sir *Jo. Jekyll.* In what Manner did you march?

Lindſey. In Squadrons.

Att. Gen. Did the noble Lord at the Bar command a Squadron?

Lindſey. I did not know what his Command was: He rode at the Head of the firſt Squadron.

Sir *Jo. Jekyll.* Do you know any Thing of raiſing Money?

Lindſey. I heard talk of it only.

Sir *Jo. Jekyll.* Do you remember any one Troop?

Lindſey. Yes; there was *Lockhart*'s; and one went by the Name of the Lord *Wintoun*'s.

Att. Gen. Who was in that Troop of *Lockhart*'s?

Lindſey. Some private Men and Servants. The Captain, Mr *Lockhart*, had two or three Servants there.

Att. Gen. Did you know the Troop called the Lord *Wintoun*'s? and was there any Servants in it?

Lindſey. There were Servrnts in it, armed with Sword and Piſtol.

Sir *Jo. Jekell.* How did the Priſoner behave himſelf at *Preſton*?

Lindſey. I cannot tell.

Sir *Jo. Jekyll.* We have done with this Witneſs.

L. H. Steward. My Lord *Wintoun*, if you wou'd ask this Witneſs any Queſtion, propoſe it?

[*After a conſiderable Pauſe.* —— Elias Cameron *was ſworn.*]

Mr. *Cooper.* My Lords, we deſire he may be asked if he was in the Rebels Army. *Cammeron's Evidence.*

Cammeron. Yes; I was there, under the Command of Captain *Macklean*, in my Lord *Charles Murray*'s Regiment.

Sir *Jo. Jekyll.* Give a general Account of what you know, from the Time you came into their Army.

Cammeron. I join'd them at *Moffet*; from whence we went to *Lockmaben*, then to *Duns*, and from thence to *Kelſoe*; two Miles from whence we met the Horſe. We went from *Kelſoe* to *Jedburg*, where I ſaw my Lord *Wintoun*. Next Day we reſted. Then we marched from *Langtoun to Brampton*. Thence to *Penrith*; ſo to *Kirby-Lonſdale*; and from thence to *Lancaſter*; where I ſaw my Lord *Wintoun* march at the Head of his Horſe, with a Trumpet ſounding before him. We ſtaid a Day at *Lancaſter:* Then the Horſe went to *Preſton*. Either *Wedneſday* or *Thurſday*, I ſaw my Lord *Wintoun*; and after the King's Forces came, I ſaw him with the other Lords.

Mr. *Cooper.* At how many Places was the Pretender proclaim'd?

Cammeron. I heard him proclaim'd at *Duns*, at *Kelſoe*, and at *Lancaſter*. I ſaw the Priſoner go into the Ring at *Lancaſter*, when they were going to proclaim him; but at the Time of the Proclamation, I did not ſee him, being in the outward Part of the Ring.

Vol. vi. p. 35. *Att. Gen.* Did you take any Priſoners in your March?

Cammeron. We took a great many Priſoners near *Penrith*.

Att. Gen. Was the Priſoner with you then?

Cammeron. I cannot really determine.

Att. Gen. Where did you ſee him firſt?

Cammeron. At *Kelſoe*; when the Foot join'd us.

Att. Gen. Did the noble Lord at the Bar ever leave you after he join'd you.

Cammeron. I heard he was not for coming to *England*.

Sir *Jo. Jekyll.* Was you at *Seaton* Houſe?

Cammeron. Yes; I was there with Brigadier *Mackintoſh*, and the Foot; but my Lord *Wintoun* was not there. We ſtaid there *Sunday*, *Monday*, and *Tueſday*.

Att. Gen. Do you know any Thing of the publick Revenue, being gathered at *Duns*, *Brampton*, and *Appleby*?

Cammeron.

Cammeron. Yes; and they gave Receipts. I ſaw one, which was to this Effect; After the Year and Date, then receiv'd ſuch a Sum of Money as Exciſe Duty due from ſuch a Perſon to ſuch a Perſon.

Att. Gen. While the King's Forces attack'd *Preſton*, what did you obſerve the Lord *Wintoun* do?

Cammeron. I obſerv'd my Lord *Wintoun* in the Church-Yard with my Lord *Kenmure* and *Derwentwater:* He was riding to-and-fro, like the reſt; but I did not ſee him in the Action; and whether he had Piſtols, or not, I cannot be poſitive.

Sir *Jo. Jekyll.* Did you ſee him aſſiſt at the proclaiming the Pretender at *Preſton*?

Cammeron. I ſaw him go into the Ring; but did not ſee him at the Time of the Proclamation.

L. H. Steward. My Lord *Wintoun*, will you ask this Witneſs any Queſtion?

L. Wintoun. My Lords, I was not prepared for my Tryal: I did not think it would have come on ſo ſoon, my material Witneſſes not being come up; therefore I hope you will do me Juſtice, and not make uſe of *Cooper*-Law, [Lord *Cooper* was High Steward,] as we uſed to ſay in our Country; Hang a Man firſt, and then judge him.

L. H. Steward. Did you hear? My Lord *Wintoun*, pleaſe to ſpeak it again.

L. Wintoun. I ſaid I was not prepared for my Tryal: I did not think it would come on ſo ſoon. Some Gentlemen are juſt come up, pleaſe your Lordſhips, to let me know what they ſay, that I may be the better able to make my Defence.

L. H. Steward. If your Lordſhip will ask this Witneſs any Queſtion, now is your Time. But you ſhou'd reſerve your Defence till the Commons have done.

[Robert Patten *ſworn.*]

Sir *W. Thompſon.* I deſire to ask this Witneſs, Whether he was in Company with theſe Rebels? and when he firſt join'd them? *Patten's* Evidence.

Patten. I join'd them on the 20th of *October* at *Wooler*

Sir *W. Thompſon.* Pray give an Account what paſs'd from that Time, till they were taken?

Patten. From *Wooler* we march'd to *Kelſoe:* My

Vol. vi. p. 36. Lord *Wintoun* was preſent at the Proclamation of the Pretender there. From *Kelſoe* we went to *Jedburg*; where we were alarm'd by a Party they took for the King's Forces; but it happen'd to be ſome of their own Party.

Sir *W. Thompſon.* What happened on that Occaſion?

Patten. I ſaw the Lords, and among the reſt, my Lord *Wintoun* at the Head of ſome Horſe.

Sir *W. Thompſon.* With what Intent.

Patten. They apprehended General *Carpenter*, with the King's Forces, was come to attack them.

Sir *W. Thompſon.* What happened afterwards?

Patten. They return'd to *Jedburg*; where they ſtaid all Day: And the next Day they march'd to *Hawick*, where they were alarm'd again at Midnight with a Party; and I ſaw my Lord *Wintoun* in the Street: He had his Sword by his Side. From thence we went to *Langholm*; where we conſulted whether to march for *England*, or *Scotland*. A party of Horſe went for *Dumfrize*. The *Highlanders*, great Part of them went off there, and wou'd not march for *England*.

Sir *W. Thompſon.* Was my Lord *Wintoun* with them at their going off?

Patten. I ſaw my Lord *Wintoun* go off, and come up again.

Sir *W. Thompſon.* If my Lord had had any Inclination to it, might not he have gone off then?

Patten. Any Body might have gone off: There was no Reſtraint upon him. From *Langholm* we marched to *Langtown*, then to *Brampton*, and ſo to *Penrith*.

Sir *W. Thompſon.* What happened there?

Patten. There was the Poſſe Commitatus: Whether they were the *Militia*, that I cannot tell; but upon our advancing, they diſperſed themſelves.

Sir *W. Thompſon.* Where was my Lord *Wintoun* then?

Patten. I ſaw him among the *Scotch* Lords, there after his uſual Manner on Horſe-back, with Sword and Piſtols.

Sir *W. Thompſon.* Whither did they go then?

Patten. They went to *Appleby*; and from thence to *Kendall*; where a Proclamation was read, as in moſt of the Towns; and afterwards they went to *Kirby-Longſdale*.

Sir

Sir *W. Thompſon.* Did any Thing happen remarkable there?

Patten. I din'd with the Scotch Lords at *Kirby*; when the Pretender's Health and Succeſs to our Cauſe was drank: That was the uſual Health.

Sir *W. Thompſon.* Was my Lord *Wintoun* there, and did he drink the Health among the reſt?

Patten. My Lord *Wintoun* was there; and all the Table drank it.

Sir *W. Thompſon.* In what Manner did you enter *Lancaſter*?

Patten. More regularly than any other Town we had march'd through: They march'd into the Town with their Swords drawn, and the Highlanders were drawn round the Croſs: The Gentlemen march'd into the Town on Horſe-back: The Pretender was proclaim'd there.

Sir *W. Thompſon.* Was my Lord *Wintoun* there when he was proclaim'd? Vol. vi. p. 37.

Patten. I can't ſay I ſaw him there: I ſaw him in the Town at the Head of ſome Horſe with his Sword drawn.

Sir *W. Thompſon.* Was there any Cannon ſeiz'd at *Lancaſter*?

Patten. Some Pieces of Cannon were ſeiz'd: We carried them with us to *Preſton.*

Sir *W. Thompſon.* Who was pray'd for in the Pariſh Church of *Lancaſter*?

Patten. The Pretender: But I can't ſay my Lord *Wintoun* was preſent. The Prayer for the Pretender was by Mr. *Forſter*'s Direction.

Sir *W. Thompſon.* Was there any Force us'd to detain my Lord *Wintoun*? or did he ſhew any Backwardneſs to go with them?

Patten. No, none at all.

Sir *W. Thompſon.* My Lords, we have done with this Witneſs.

Att. Gen. We deſire to call my Lord *Forreſter.*

[*Then a Chair was placed for the Lord* Forreſter *near the Clerk's Table, and the Oath was adminiſter'd to him by the Lord High Steward.*]

Lord *Forreſter*'s Evidence.

Sir *Jo. Jekyll.* My Lords, we beg Leave to ask this noble Lord a Queſtion, or two. Was your Lordſhip at *Preſton*?

L. Forreſter. Yes, my Lords; I was there with the King's Troops; and had the Honour to command Brigadier *Preſton*'s Regiment. We came before *Preſton* on *Saturday*, the 12th of *November*: I commanded one of the Attacks under Brigadier *Honeywood*.

Att. Gen. How many of the King's Officers and Soldiers were kill'd?

L. Forreſter. I can't exactly tell: A good many. We had 'twixt Sixty and Seventy of the Regiment, I had the honour to Command, kill'd and wounded; about Thirty of them kill'd Dead on the Spot.

Att. Gen. How long did that Attack laſt, before they deſir'd to capitulate.

L. Forreſter. From *Saturday* till *Sunday*, between One and Two a Clock: The Town ſurrender'd about Six o' Clock on *Monday* Morning: I came into the Church-Yard, and took Poſſeſſion of it. Then I went to the Mytre-Tavern, where that Lord, and the reſt of the Lords were. I diſarm'd them. My Lord *Wintoun* deliver'd up two Caſes of Piſtols.

Sir *Jo. Jekyll.* If my Lord hath a mind to ask any Queſtion of the Noble Lord that hath been examin'd, we deſire he may do it.

L. Wintoun. Pleaſe to ask him, whether I had Sword or Piſtol in my Hand.

L. H. Steward. Take the Queſtion in Writing.

[*Then the Clerk, went and took it.*]

Queſtion, Whether the Arms your Lordſhip mention'd to have been deliver'd to you, were the Arms he had then about him? or his Lordſhip did not ſay they were in the Stable?

L. Forreſter. He brought the Arms to me himſelf, and gave them me out of his own Hands, and deſir'd me to deliver them to my Lord *Kimmergen*.

L. H. Steward. Another queſtion is, Whether my Lord *Wintoun* did not give Orders to his Servant, to bring the Arms out of the Stable, and to give them to the Lord *Kimmergen*.

L. Forreſter. I believe he did bring them out of the Stable.

L. Wintoun. I deſire he may be ask'd, whether I had a Sword about me.

L. For-

L. Forreſter. I did not ſee any Sword he had: He had a great Coat on, and might have a Sword under that; but I ſaw none.

L. H. Steward. Did the Priſoner at the Bar deliver himſelf and his Arms to your Lordſhip as one of thoſe in the Surrender?

L. Forreſter. I took it ſo.

[General Carpenter, *a Member of the Commons, ſworn in his Place.*]

Sir *J. Jekyll.* Mr. *Carpenter*, pleaſe to give my Lords an Account when you came to *Preſton*, and what happen'd there. General *Carpenter's* Evidence.

Gen. Carpenter. I came to *Preſton* on Sunday the 13th of *November* laſt, about Ten in the Morning; the Troops under Mr. *Will*'s came there the Afternoon before. I had Three Regiments of Dragoons with me; and there had been no Intercourſe or Meſſage paſs'd before I came. Afterwards the Rebels ſent out to know what Terms they might expect; and were anſwer'd, None, but at Diſcretion. Soon after they ſent out Captain *Dalzell*, to deſire a Ceſſation till next Morning. Upon which I ſent in Colonel *Churchill* and Colonel *Cotton*, to tell them, I agreed to a Ceſſation, provided they ſent out an Engliſh and a Scotch Lord, as Hoſtages. I named my Lord *Derwentwater* and my Lord *Kenmure*. Captain *Dalzell* ſaid, he thought my Lord *Kenmure* wou'd not come out. Then I named Brigadier *Mackintoſh*. He alſo thought he wou'd not come out. I was unwilling to make great Difficulties, it growing towards Night, and ſaid either of the *Mackintoſhes* and an Engliſh Lord; and he brought out the Lord *Derwentwater* and Colonel *Mackintoſh* as Hoſtages, that they ſhou'd make no Attempt to eſcape, or any Works for Defence of the Town. Vol. vi. p. 38.

Att. Gen. When did they agree to ſurrender?

Gen. Carpenter. Not till next Morning. At which Time they were to determine whether they wou'd ſurrender, or not.

Att. Gen. Were theſe all the Terms offer'd? or was there Hopes of Mercy given them?

Gen. Carpenter. I gave them none at all myſelf, and it is very unlikely any Body elſe ſhould: I commanded in Chief his Majeſty's Forces there, and

if

if any Officer took upon him to do ſo, without my Leave, it is what he cannot anſwer by the Rules and Diſcipline of War: I hope no Body did; I am ſure I gave no ſuch Directions.

Sir *Jo. Jekyll.* Did you hear any other Officer give them any Expectation of Mercy?

Gen. Carpenter. No, I did not.

L. H. Steward. My Lord *Wintoun*, now is your Time, if you will ask any Queſtion of General *Carpenter.* [*And the Clerk was ſent down to take the Queſtion in Writing.*]

L. H. Steward. The Queſtion my Lord asks is, Whether he was concerned in making any Capitulation, or knew any Thing about it?

Gen. Carpenter. Not that I know of. He was not the Perſon treated with: I treated with my Lord *Derwentwater* and one of the *Mackintoſhes.*

L. Wintoun. I deſire to ask my Lord *Forreſter* a Queſtion.

Sir *Jo. Jekyll.* Tho' that be out of Method, we don't oppoſe it.

L. H. Steward. Bring up the Queſtion in Writing. The Queſtion my Lord *Wintoun* propoſes, is, Whether he had any Sword or Arms, when he firſt ſaw your Lordſhip at *Preſton*?

L. Forreſter. I don't remember I had a Sword from him. I can't tell whether he had a Sword about him; for he had a great Coat on: I took from him only the two Caſes of Piſtols which he gave me.

[*General* Wills *ſworn.*]

General *Wills's* Evidence.

Sir *Jo. Jekyll.* Pray give my Lords an Account what happen'd at *Preſton.*

Gen. Wills. I commanded the King's Troops that attack'd the Rebels there. I came before the Town the 12th of *November* laſt at One o' Clock, and order'd two Attacks: That which lead to *Wiggan* was commanded by Brigadier *Honywood*, who beat the Rebels from their firſt Barricade, and took Poſſeſſion of ſome of the Houſes in the Town. The other Attack, which lead to *Lancaſter*, was commanded by Brigadier *Dormer*; who lodg'd his Troops near the Barricade of the Rebels. Next Day, about Two o' Clock, Mr. *Forſter* ſent out Colonel *Oxburgh*, an Iriſh Man, offering to lay down

down their Arms and ſubmit, and hop'd I wou'd recommend them to the King's Mercy. I refus'd; and ſaid, I wou'd not treat with Rebels; for they had killed ſeveral of the King's Subjects, and muſt expect to undergo the ſame Fate. Upon which he ſaid, As I was an Officer, and a Man of Honour, he hop'd I wou'd ſhew Mercy to People who were willing to ſubmit. I reply'd, All that I wou'd do for them was, That if they laid down their Arms, and ſubmitted Priſoners at Diſcretion, I wou'd prevent the Soldiers cutting them to Pieces till I had further Orders; and wou'd give them but an Hour's Time to conſider of it; and ſent them back into the Town to acquaint *Forſter* of it. Before the Hour expir'd, they ſent out Mr. *Dalzell*, Brother to the Earl of *Carnwath*; and he wanted Terms for the Scotch, I anſwer'd, I wou'd not treat with Rebels, or give them any other Terms than I had offer'd them before. Then they deſir'd I wou'd grant them Time till Seven o' Clock the next Day, to conſult the beſt Method of delivering themſelves up. I agreed to it, provided they threw up no new Intrenchments in the Streets, and ſuffer'd none of their People to eſcape, and that they ſent out the Chief of the Engliſh and Scotch as Hoſtages for the Performance; and I ſent in Colonel *Cotton*, who brought out the Earl of *Derwentwater* and Mr. *Mackintoſh*. Next Day, at Seven in the Morning, Mr. *Forſter* ſent to let me know they were willing to give themſelves up Priſoners at Diſcretion. Mr. *Mackintoſh* being by, ſaid, he wou'd not anſwer the Scotch would ſurrender in that Manner; for they were People of deſperate Fortunes: He had been a Soldier himſelf and knew what it was to be a Priſoner at Diſcretion. Whereupon I bid him go back to his People again, and I wou'd attack the Town; the Conſequence whereof wou'd be, That I wou'd not ſpare a Man of them. *Mackintoſh* went back, but came running out immediately again, and ſaid, That the Lord *Kenmure*, and the reſt of the Noblemen, with his Brother, wou'd ſurrender in like Manner as the *Engliſh*.

Vol. vi. p. 39.

Sir *Jo. Jekyll*. How many were kill'd on the Attack?

Gen.

Gen. Wills. I believe between Sixty and Seventy; but few of the Horſe; there were kill'd and wounded about an Hundred and thirty.

Att. Gen. Did you give any of the Rebels Encouragement to hope for Mercy?

Gen. Wills. All the Terms I gave was, That I wou'd ſave their Lives from the Soldiers till further Orders, if they ſurrender'd at Diſcretion; (for when Men ſurrender at Diſcretion, it is in our Power to cut them all to Pieces by the Rules of War;) and if they did not comply, I would renew the Attack, and not ſpare a Man.

L. H. Steward. You gave no Directions to your Officers to give any other Terms than you yourſelf had offer'd?

Gen. Wills. No, I did not.

Mr. *Cowper.* Was there any other but Colonel *Churchill* and Colonel *Cotton* ſent in by you, or by General *Carpenter*?

Gen. Wills. Yes; Colonel *Naſſan*, to bid our People forbear firing, and order Colonel *Cotton* to come out with the Hoſtages; but he had no Authority to treat.

L. H. Steward. My Lord *Wintoun*, the Clerk is ſent down to you again; if you have any Queſtion, he will take it.

[*The Clerk return'd with the Queſtion in writing to the Lord High Steward.*]

L. H. Steward. The Queſtion my Lord propoſes to General *Wills* is, Whether you, General *Wills*, gave any Summons to ſurrender before you made the firſt Attack? or if you did not make the Attack without any Summons at all?

Gen. Wills. When I was viewing the Town, they ſhot two of my Dragoons; and I did not ſummon them.

L. H. Steward. Another Queſtion my Lord asks, is, Whether you offer'd to prevent the Forces falling on the Gentlemen at *Preſton*, provided they ſurrender'd at Diſcretion?

Gen. Wills. I did hinder the Troops falling on them, after they offer'd to ſurrender.

L. H. Steward. Another Queſtion is, What you know, or have been informed of his Lordſhip's being

being againſt coming to *England*? or of my Lord's being againſt fighting with your Troops, or General *Carpenter*'s?

Gen. Wills. I never ſaw my Lord *Wintoun* till four Days after he was taken at *Preſton*; ſo that I can ſay nothing to it.

L. Wintoun. I deſire General *Carpenter* may be ask'd the ſame Queſtion.

Gen. Carpenter. My Lords, I heard, that at *Jedburg* they held a Council of War: But this is only hear-ſay; I ſpeak not of my own Knowledge.

Sir *Jo. Jekyll.* For the ſake of Evidence, it is incumbent on us to deſire that my Lord confine himſelf to ask the General what he knows, and not to what he heard ſaid.

[*Colonel* Churchill *ſworn.*]

Mr. *Cowper.* Was you ſent into *Preſton*? and by whom?

Col. *Churchill's* Evidence. Vol. vi. p. 40.

Col. Churchill. I came to *Preſton* about Ten o' Clock on *Sunday* Morning with General *Carpenter*: About One they ſent out to capitulate, and at Five I was ſent in by General *Carpenter*. Their requeſt was, That they might have Time till next Day to conſider whether they ſhould ſurrender, or not. My Orders were, They ſhou'd have that, if they ſent out Hoſtages that none of them ſhou'd attempt to eſcape, and no Defence ſhou'd be made in the Town: Thoſe named by General *Carpenter*, were the Lord *Derwentwater*, Lord *Widdrington*, Lord *Kenmure*, or *Mackintoſh* for the Scotch. I directed them to ſend the Hoſtages to me. They cou'd not find my Lord *Derwentwater* or *Widdrington*, and *Mackintoſh* was gone to Bed. A little before Eight I told them the Terms; and my Lord *Derwentwater* and *Mackintoſh* went out with me. I carried them to the two Generals; and at Seven next Morning they ſurrender'd themſelves.

Mr. *Cowper.* Did you, by Commiſſion from the General, or of your ſelf, give them any Hopes of Mercy?

Col. Churchill. I had no Power; and was ſo far from doing it, that I don't remember any Thing was ſaid about it on either Side.

Mr. *Cowper.*

Mr. *Cowper*. Did you hear any other Officers give them ſuch Aſſurance?

Col. Churchill. I never heard a Word like it.

Att. Gen. Who did you treat with?

Col. Churchill. I was carried to Mr. *Forſter*, and then to my Lord *Kenmure*.

Att. Gen. Who was preſent beſides my Lord *Kenmure*?

Col. Churchill. I ſaw a great many; but did not know any of them.

[*Colonel* Cotton *ſworn*.]

Col. *Cotton*'s Evidence.

Att. Gen. Was you ſent into *Preſton* by General *Wills*? And what Inſtructions were given you?

Col. Cotton. At their Deſire I was ſent into the Town by General *Wills*: I told them we could give them no Terms. They ſaid there were Diſputes between the Scotch and Engliſh, and deſired till next Morning to reconcile them. General *Wills* ſent me into the Town again, to allow them that Time, provided the Lords would give their Words that they would throw up no Works for their Defence, and do their utmoſt that none of their People ſhould eſcape. The Lords did give their Words; and the Lord at the Bar was preſent.

Att. Gen. Upon what Terms did they ſurrender?

Col. Cotton. I had no Power from General *Wills* to promiſe them any Terms; nor I did not: I told them I had no Power to offer them any.

Sir *Jo. Jekyll*. Was there any Overtures made of obtaining the King's Mercy?

Col. Cotton. I had no ſuch Orders; neither did I offer it, directly or indirectly.

L. Wintoun. I wou'd know, whether they did not take Priſoners, and kill them, notwithſtanding the Capitulation?

Col. Cotton. My Lords, upon my coming out of Town, we were alarm'd with an Account that ſeveral of them were attempting to eſcape; and about Six of thoſe who were endeavouring it were cut to Pieces; and upon this Breach of their Parole, Colonel *Churchill* and myſelf were ſent in to demand Hoſtages; and brought out the Lord *Derwentwater* and Mr. *Mackintoſh*.

Brigadier

[*Brigadier* Munden *ſworn.*]

Att. Gen. We deſire to know if he was ſent with theſe two Colonels into the Town? and what Directions were given him? Brigadier *Munden*'s Evidence.

Brig. Munden. After the Rebels demanded an Audience of General *Wills*, their firſt Demand was for Terms, and were anſwered, That General *Wills* would not treat with Rebels; but if they ſurrendered at Diſcretion, their Lives ſhould be ſpared till his Majeſty's Pleaſure was known. If they expected other Terms, they might return into Town immediately, and he would attack them, and cut them to Pieces. Afterwards my Lord *Derwentwater* and Mr. *Mackintoſh* came out to us; and I heard them frequently repeat their Requeſt to the General for Terms, and *Mackintoſh* gave a particular Account of the Bravery and Hardineſs of their Troops. Mr. *Wills* told him, he might have tried them, if he pleaſed; and then it would have appeared whether the King's Troops, or a Parcel of Rebels, would have acted the braveſt Part. Mr. *Wills* received them with the utmoſt Deteſtation and Contempt, and gave them no Hopes of Mercy, directly or indirectly. Vol. vi. p. 41.

Att. Gen. Did you hear any other Officer offer them any other Terms?

Brig. Munden. No, I did not hear any.

Sir *Jo. Jekyll.* Did my Lord *Wintoun* give his Parole?

Brig. Munden. I very well remember Col. *Cotton* ſaid, he had received his Parole of Honour among the reſt.

L. H. Steward. My Lord *Wintoun*, the Gentlemen of the Houſe of Commons have done with this Evidence againſt you; therefore this is the proper Time for your Lordſhip to make your Defence. Take your own Method, either by calling your Witneſſes, or making ſuch Obſervations in your Defence, as you think proper.

L. Wintoun. Pleaſe to allow me ſome Time; for my Witneſſes are not yet come: Pleaſe to allow me till this Day Month, till they come up. It will ſignify nothing to examine Witneſſes after I am dead. I never ſaw my Council but once, to inſtruct me what to ſay.

There

[*There being a Noiſe in Court, Proclamation was made for Silence.*]

L. H. Steward My Lord, offer what you have to ſay while the Court is in Silence.

L. Winton. The moſt material of my Witneſſes are not come up: They will be here ſome Time next Week. I have not talked to my Councel.

Att. Gen. What that noble Lord inſiſts upon now, is out of Time. When the Evidence for the Proſecution is given, the Priſoner is not to have Time to delay the Proceedings.

Mr. *Cowper* anſwers the Priſoner's Demand for putting off his Tryal.

Mr. *Cowper.* "My Lords, we ſhould have been "very far from preſſing to bring on his Lordſhip's "Tryal ſooner than is conſiſtent with the Rules of "Juſtice: But when the Time your Lordſhips have "already allowed him on ſeveral Applications is "conſidered; when he had Notice ever ſince he "was made Priſoner at *Preſton*, that it concerned "him to provide for his Defence; when we reflect "how long it is ſince the Commons exhibited their "Impeachment, it is ſurprizing to hear his Lord-"ſhip inſiſt he hath not had Time to bring up his "Witneſſes. It may eaſily be explained, with what "View his Lordſhip is adviſed to make this Defence, "namely, to move the Compaſſion of the People; "and I fear, to traduce the Juſtice of your Lordſhips "Proceedings. He hath had more than Time ſuf-"ficient, more than any one in the like Circum-"ſtances, hath been allow'd; and to have nothing "to offer at laſt, but that his Witneſſes are not come, "without producing a ſingle Witneſs to prove that "he has, or expects any one Witneſs to appear for "him. My Lords, the ſtated Rules in Tryals of "this Nature ought to be for ever ſacred: No Pri-"ſoner has a Right to be indulged in Methods un-"known to the Conſtitution: There ought to be "no Interruption or Delay whatever, when a Pri-"ſoner impeached by the Commons puts himſelf "upon his Defence, and is brought to Tryal. Your "Lordſhips lately denied the Priſoner any further "Time; and if it was thought improper to be grant-"ed then; now he hath put himſelf upon Tryal at "your Lordſhips Bar, ſurely he ſhall not be indul-

ged

" ged in the ſame Requeſt. —— Whatever Compaſ-
" ſion the Commons may entertain for this unhap-
" py Lord, yet when they reflect, that the Methods
" and Form of Juſtice are eſſential to Juſtice, they
" think themſelves obliged to oppoſe a new At-
" tempt, and hope the Tryal ſhall proceed."

L. Wintoun. My Witneſſes will be up about Monday or Tueſday next. I have had no longer Time than ſince the 10th of *February* to bring them up, when it was very bad travelling. Vol. vi. p. 42.

L. H. Steward. My Lord *Wintoun*, you have heard the Commons oppoſe your Requeſt, and their Reaſons for it: Does your Lordſhip ſtill inſiſt upon it, or do you withdraw your Requeſt?

L. Wintoun. I inſiſt upon it, my Lords.

[*Then the Peers adjourned to their Houſe; and an Hour after returned to the Hall.*]

L. H. Steward. I am commanded by the Lords to let you know, that having conſidered your Requeſt, they are of Opinion it is not conſiſtent with the Rules of Juſtice, to allow you further Time for ſending for your Witneſſes; therefore you are to proceed in your Defence. And in reſpect of the Lowneſs of your Voice, the Lords have ordered a Perſon to ſtand by you, to report to their Lordſhips what you ſay during the Tryal.

[*A Clerk was ſworn to make true Report. Whereupon the Lord* Wintoun *ſpoke ſo very low, that ſcarce any one could hear him.*]

Sir *Jo. Jekyll.* My Lords, it is not your Intention that the Lord at the Bar ſhould ſpeak ſo low, that neither we, nor any Body elſe that is near him, can hear what he ſays.

L. H. Steward. My Lord *Wintoun*, ſpeak as loud as you can, ſo that the Managers may hear.

Clerk from L. Wintoun. I think it very hard, and great Injuſtice, that I ſhould not be allowed Time for my Defence, that my Witneſſes might come up; and that I ſhould be tied down to a fooliſh Form, which I am not accuſtomed to, when I am in Danger of my Life.

[*Then the Houſe adjourned.*]

[*Friday, March* 16. *The Second Day.*]

L. H. Steward. I again remind your Lordſhip, you are to ſpeak as loud as you can.

Clerk from L. Wintoun. My Counſel is ready here to ſpeak for me.

L. H. Steward. Your Lordſhip cannot have Counſel to ſpeak in your Defence, unleſs it be to Matter of Law. The Law ſuppoſes every Man ſufficient to anſwer for himſelf, as to Matter of Fact.

Lord *Wintoun* inſiſts on his Counſel's ſpeaking to Matters of Fact.

Clerk from L. Wintoun. My Lords, I am not accuſtomed to ſpeak on ſuch Occaſions; therefore I hope your Lordſhips will allow me Counſel to ſpeak for me.

L. H. Steward. The Law in this Caſe admits of no Exception, but holds to the general Rule.

Clerk from L. Wintoun. I don't underſtand the Law. I am a Stranger to the Cuſtoms of the Houſe; therefore hope your Lordſhips will allow me Counſel.

L. H. Steward. I believe your own Counſel will tell you, as the Law ſtands, they cannot be heard for you as to Matter of Fact. Have you any Witneſſes to call in your Defence?

Clerk from L. Wintoun. I told your Lordſhips Yeſterday, my moſt material Witneſſes were not come up.

L. H. Steward. I acquainted your Lordſhip Yeſterday, and now remind you of your Petition exhibited to the Houſe of Peers; wherein you acknowledge a great Number of your Witneſſes are come up. You only then pretended four were abſent. Doth your Lordſhip deſign to make no Manner of Uſe of that great Number of Witneſſes you admitted were come?

Clerk from L. Wintoun. They will ſerve for nothing without thoſe Witneſſes coming.

L. H. Steward. My Lord, pleaſe to obſerve the Lords wait with great Patience, to ſee if you will be better adviſed, and go into your Defence.

Clerk from L. Wintoun. It was always the Cuſtom in any Court where I was, for People to be allow'd to ſpeak, or the Counſel for them: I am not accuſtom'd to ſpeak in my own Defence; therefore hope you will allow my Counſel to ſpeak for me. They have a Point of Law to ſpeak to, they ſay; but I know nothing of it.

Vol. vi. p. 43.

L. H.

L. H. Steward. Though your Lordſhip can't argue the Point of Law, can't you propoſe what the Queſtion is?

Clerk from L. Wintoun. It is impoſſible for me to do a Thing I don't underſtand. I don't know what the Point of Law is, no more than a Man that knows nothing of it.

[*Here ſome laugh'd.*]

L. Wintoun. I am only ſpeaking in my own Defence; I don't expect to be laugh'd at.

L. H. Steward. I think his Lordſhip obſerves well: I hope every one will forbear that. Will your Lordſhip pleaſe to name what Matter the Queſtion concerns?

Clerk from L. Wintoun. It will be ſomething about the Tryal; no doubt ſomething of what the Common People have been ſpeaking about. —— It is no doubt in anſwer to the Managers of the Houſe of Commons. I have not ſeen my Counſel ſince I was here; I have been kept cloſe Priſoner, ſo that I have not had Time to be informed of all the Points of Law they have to plead. The Counſel themſelves will tell what Points of Law they have to plead.

L. H. Steward. You ſhould propound your own Queſtion before your Counſel ſpeak. Before it appears to be a Point of Law, it is not fit for Counſel to be heard.

Clerk from L. Wintoun. It is impoſſible I ſhould direct Counſel; I that don't underſtand Law.

L. H. Steward. Did you not ſpeak to your Counſel laſt Night?

Clerk from L. Wintoun. I could not, becauſe it was late when I went from hence. I was lock'd up, and could not ſee them. I ſee no Body but the Guards.

L. H. Steward. Hath not your Lordſhip ſeen your Counſel, as often as you requir'd an Order for ſo doing?

Clerk from L. Wintoun. I never ſaw my Counſel but once, before I gave in my Anſwer.

L. H. Steward. Did you deſire to ſee them oftner?

Clerk from L. Wintoun. My Solicitor ſpoke to them; but my Witneſſes not being come up, it was needleſs for me to ſpeak to my Counſel before they knew what the Witneſſes had to ſay, and ſo might draw up a State of the Queſtion. I did not doubt but

the Lords would give me more Time; and therefore was not ſo deſirous to ſee my Counſel as I ſhould have been, if I thought I ſhould have been ſo much crampt in Time.

Mr. *Cowper* begins to ſum up the Evidence.

Mr. Cowper. "MY Lords, it was reaſonable "to ſuppoſe, that the Priſoner "having pleaded *Not Guilty*, would have given ſome "Evidence in ſupport of his Plea; but ſince he "ſeems reſolved not to enter into a Defence, I "think it my Duty to ſay ſomething on this unex-"pected Occaſion. —— The Treaſon is ſuch, and "the Evidence ſo full, that his Lordſhip's Behavi-"our, unaccountable as it is, is more to his Pur-"poſe than any other could have been. Whoever "conſiders the Lord *Wintoun*'s Anſwer, will find "him confeſſing the ſeveral Overt-Acts of Treaſon "laid to his Charge, and then drawing a falſe Con-"cluſion, that he is *Not Guilty*. He denies that "what he has done was with a traiterous Intention, "and emphatically aſſerts, that the pure Streams "of Loyalty which have run in the Blood of his "Anceſtors, were derived to him uncorrupted: And "thus a Popiſh Pretender being the Object of his "Lordſhip's Loyalty, he thinks he may be guilty of "the whole Impeachment without being a Traytor; "and how far he may think fit to acknowledge "your Lordſhip's Juriſdiction, I know not. As to "the Impeachment, your Lordſhips have obſerved, "that it hath been fully proved." [*Here he begins to ſum up the Evidence, already given at large.*]

L. Guilford. I think it proper, before the Houſe of Commons ſum up their Evidence, to move your Lordſhips to adjourn to the Houſe of Lords.

[*Then the Houſe adiourn'd, and in about half an Hour after returned.*]

Lord High Steward demands what the Priſoner has to ſay before the Commons proceed further. Vol. vi. p. 44.

L. H. Steward. My Lord *Wintoun*, I am ordered by their Lordſhips to acquaint you, that they are ſtill ready to hear what you have to ſay in your Defence; and any Witneſs you are pleaſed to call: But then, if you neglect this Opportunity, it is their Lordſhips Pleaſure, that the Managers of the Houſe of Commons ſhould go on with their Reply: And if

if ſuch Reply be made, you will have no further Opportunity to alledge or prove any Thing. And I am to acquaint you alſo, that it is their Lordſhips Opinion, that if you have any Queſtion of Law, you muſt propound it to their Lordſhips yourſelf.

Clerk from L. Wintoun. I believe my Counſel have ſomething to ſay in anſwer to the Managers: But the Gentleman who was preſent [*the Clerk*] knows they would not let me know what they had to ſay.

L. H. Steward. If your Lordſhip has any Notes to help your Memory in your Defence, look upon them.

L. Wintoun reads, and the Clerk repeats. The Counſel have a Point of Law ariſing from what hath paſſed in the Houſe, to ſhew that he is ſuch a Perſon as is not capable of committing the Treaſon laid in the Impeachment. I plead, *Not Guilty*; and this alledges the ſame. I ſay I am *not guilty*; and the Paper ſays, it will demonſtrate I am not. The Priſoner ſays he is *Non Compos.*

Clerk from L. Wintoun. I don't underſtand Law, and how ſhould I introduce a Point of Law?

L. H. Steward. If your Lordſhip doth not proceed in your Defence, I ſhall ſignify to the Managers to reply; and the Lords will not allow you to ſpeak afterwards.

Clerk from L. Wintoun. The Counſel deſire to be heard: Since they have written a Paper, to be heard on that Paper.

L. H. Steward. The Paper is allowd to help your Memory; but you muſt not give in a Paper, as written by your Counſel, nor mention it as ſuch.

Clerk from L. Wintoun. I deſire my Counſel may be heard to the Point of Law I read out of the Paper.

L. H. Steward. You have by the Help of a Paper propounded what you call a Point of Law; their Lordſhips have heard it. I don't find any Motion made to adjourn, to conſider whether ſuch a Point is fit for your Counſel to be heard to. If there be any Doubt, you will ſee it by ſuch a Motion.

[*Here was a ſhort Pauſe.*]

L. H. Steward. If you do not proceed, I muſt intimate to the Managers, that they may reply.

Clerk from L. Wintoun If your Lordſhips will allow my Counſel to be heard on the Point of Law I have given in.

L. H. Steward. It is no Point of Law which you propoſe.

Clerk from L. Wintoun. I am not a Judge of a Point of Law; if your Lordſhips will hear the Counſel, they will tell you what it means.

L. H. Steward. Gentlemen of the Houſe of Commons, you may reply.

The Managers proceed in their Reply.

Mr. *Cowper.* "MY Lords, I was obſerving that "the Behaviour of the Priſoner, "My Lord *Wintoun*, during the whole Progreſs of "the Rebellion, appeared in a quite different Light "to that in which he would now willingly appear. "Your Lordſhips find him, according to the Evi- "dence at every falſe Alarm, very inquiſitive to "know the Occaſion. Having aſſum'd the Com- "mand of a Squadron, his Lordſhip was inſtantly at "his Poſt, ready to encounter his Majeſty's Forces; "and the Reverend Mr. *Patten* has done Juſtice to "his Lordſhip's Vigilance and Courage on this Oc- "caſion: But it ſeems the Alarms were both falſe. "Hence we may obſerve, that Alarms may be falſe, "and *Dangers may be imaginary*; which Mr. *Pat- "ten*, and Men of his Principles, would do well to "reflect on at Leiſure. [*Here Mr.* Cowper *pro- "ceeds to ſum up the reſt of the Evidence.*] The Vol. vi. page 45. "Commons cannot but take a particular Satisfac- "tion in this Lords putting himſelf upon his Tryal, "which has given them an Opportunity, in the moſt "publick Manner, to vindicate his Majeſty's Gene- "rals from a malicious Calumny ſuggeſted, even by "this Lord in his Anſwer to the Impeachment, as "well as by the reſt of his Accomplices already at- "tainted. It ſeems not to be accidental, that all the "Lords impeach'd (falſe as it appears to be) ſhould "alledge, that they ſurrendered upon Promiſes, or "Hopes given them of Mercy, conſidering that "there is not the leaſt Shadow of Truth to ſupport "this Suggeſtion. It is no uncharitable Reflection "to ſay, That their Lordſhips, to ſupply the Miſ- "chiefs their Arms could not accompliſh, were wil- "ling to aſſiſt their Party, by furniſhing them with "an Untruth to propagate. I may, with the Con-

"ſent

" ſent of this whole Aſſembly, preſume to ſay it is " falſe, nay, that the very Reverſe is true. The Re- " bels would have obtain'd a Promiſe, or even a " Hope of being recommended; but the Generals " rightly told them, *Rebels deſerved no Mercy; nor* " *would they treat with Rebels of ſurrendering other-* " *wiſe than at Diſcretion.* I cannot conclude with- " out obſerving a Queſtion his Lordſhip asked du- " ing the Courſe of the Evidence, namely, Whether " our Men (the Rebels) were not ſlain, during the " Time of the Ceſſation of Arms at *Preſton*? Which " in Fact it ſeems was true; and if it had been an- " ſwered in the affirmative, without Explanation, his " Lordſhip would have been gratify'd with furniſh- " ing his Friends with another Story, which, well " improved, might have laſted a good while. But " when the Witneſs, diſcerning the Tendency and " Malignancy of the Queſtion, anſwered, That " the Rebels had ſtipulated and agreed that no Works " ſhould be erected in the Town during the Suſ- " penſion; and that no Perſon in the Town ſhould " go out during that Time; in Breach of which " Agreement, ſix of the Rebels attempted Sword- " in-Hand to charge through the King's Troops; in " which Attempt they fell. From whence it appears " that the King's Troops did no more than their " Duty.

Sir *W. Thompſon.* " MY Lords, The Anſwer of the Priſoner not being ſup- " ported by Evidence, ought to go for nothing; but " ſince ſeveral Things are alledged to mitigate or " juſtify his Proceedings, which are falſify'd by our " Evidence, I beg Leave to take ſome Notice of " it. Sir *William Thompſon's* Reply.

" I agree with him, that it will be very pleaſing to " the Commons to ſee an innocent Man acquitted; " nor do I differ with him in his Aſſertion, That to " be taken with Perſons in Arms againſt the Go- " vernment, is a reaſonable Preſumption of his Guilt, " and a juſt Foundation to accuſe him with the reſt: " But as to the Circumſtances of his Caſe being " ſo different from the others, as to require your " Lordſhips to diſtinguiſh him in Judgment, this " I ſee little Reaſon for, from any Thing that has " been offered to your Lordſhips. He is pleaſed to

" give an Account of what happen'd to him eight
" Years ago, when he endeavoured to avoid the
" Suſpicion of the Government. He mentions the
" ill Uſage of the Militia, and the King's Troops, the
" Rifling his Houſe, *&c.* without ſaying when they
" happen'd, or from whom. He ſays he was un-
" fortunately driven into the Company of ſome Per-
" ſons mentioned in the Impeachment; that he
" joined them without any Intention to aſſiſt their
" Deſigns, *&c.* But the Evidence ſufficiently explains
" how far he abetted their Undertakings: It is pro-
" ved he brought fourteen of his Domeſticks with
" him to the Rendezvous, moſt of them well arm-
" ed and accoutered. [*Here he proceeds to ſum up*
" *the Evidence again, and then goes on.*] My Lords,
Vol. vi. p. 46. " whether the whole Tenor of this Proceeding does
" not manifeſt the Intention of this noble Lord;
" and whether the Evidence of theſe Facts does not
" falſify every Allegation in his Anſwer, by which
" he would juſtify himſelf, your Lordſhips will ea-
" ſily determine. As to that Aſſertion, That he ne-
" ver degenerated from his loyal Anceſtors, ſo as to
" form any Deſign to ſubvert the Conſtitution, *&c.*
" I wiſh I could obſerve, for the ſake of this unhappy
" Lord, that it were not too evident what Conſti-
" tution he has ventured his Life and Fortune to
" preſerve. All Mankind who do not ſhut their
" Eyes, muſt ſee that the Deſign of this Noble Lord,
" and his Accomplices, was to dethrone his moſt
" ſacred Majeſty, our Proteſtant King; and in his
" ſtead, to ſet up a Popiſh Pretender to his Crown,
" bred up in Superſtition, and the Maxims of Ty-
" ranny. That their Succeſs muſt have produced a
" dreadful Scene of Blood and Confuſion; the
" Lives of the King, the Royal Family, your
" Lordſhips, and thoſe other brave *Britons* who
" would have ſtood up in Defence of the Re-
" ligion, Laws, and Liberties of their Country,
" muſt have been ſacrificed to the Rage of Popiſh
" Bigotry, and the inſatiable Cruelty of Jeſuiſts and
" Prieſts, our moſt implacable Enemies. —I can't
" but take notice here, that his moſt gracious Ma-
" jeſty, againſt whom this unfortunate Lord hath
" ſo ſignally offended, hath been pleaſed to expreſs
" his mild and gentle Diſpoſition, even to him, and
" his Aſſociates, his moſt inveterate Enemies. *It*
" *was*

" *was an Uneaſineſs to him, That he could not diſtin-*
" *guiſh the firſt Years of his Reign by the endearing*
" *Mark of Peace and Clemency: It afflicted him*
" *that the Calamities of his faithful Subjects, ſhould*
" *require indiſpenſible Returns of Severity.* And he
" preſum'd their Lordſhips natural Compaſſion Vol. vi. p. 47.
" would encline them to the ſame merciful Diſpo-
" ſition: But the Commons hoped their Lordſhips
" would have ſome Regard to the Lives of thoſe
" gallant Men, whom the Rebels had murdered,
" and loſt their Lives in their Country's Cauſe:
" That their Blood demanded the Juſtice of that
" Country, in whoſe Defence it was ſpilt: That
" the publick Safety alſo required their Lordſhips
" exemplary Juſtice on the principal Offenders:
" That this was the moſt effectual Method to pre-
" vent future Inſurrections, and render our preſent
" happy Eſtabliſhment firm and laſting."

Sir *Jo. Jekyll.* The Commons having nothing more to offer, deſire your Lordſhips Opinion on this Evidence.

[*Then the Lords adjourn'd to their Houſe; and being returned, and the Lord High Steward ſeated in the Chair, he ſtood up uncovered, and beginning with the youngeſt Peer, ſaid,*]

Thomas Lord *Parker.* What ſays your Lordſhip? Is *George* Earl of *Wintoun* guilty of the High Treaſon whereof he ſtands impeached, or not guilty?

Then *Thomas*, Lord *Parker* ſtanding up in his Place, and laying his Rght Hand on his Breaſt, ſaid, *Guilty upon my Honour*; and in like Manner all the Lords preſent found him Guilty, who were, *Richard* Lord *Cobham*, *Henry* Lord *Carleton*, *Bennet* Lord *Harborough*, *James* Lord *Saunderſon*, *Robert* Lord *Bingley*, *Allen* Lord *Bathurſt*, *Thomas* Lord *Manſell*, *Charles* Lord *Boyle*, *Simon* Lord *Harcourt*, *John* Lord *Belhaven*, *William* Lord *Roſs*, *John* Lord *Gower*, *Maurice* Lord *Haverſham*, *Henry* Lord *Gilbert*, *John* Lord *Aſhburnham*, *Francis* Lord *Guilford*, *Richard* Lord *Lumley*, *Peregrine* Lord *Osborne*, *Charles* Lord *Cornwallis*, *John* Lord *Colepeper*, *Charles* Lord *Bruce*, *William* Lord *Brook*, *James* Lord *Compton*, *William* Lord *St. John*,

Thomas

Thomas Lord *Howard* of *Effingham*, *Charles* Lord *Fitzwalter*, *John* Lord *Delawar*, *Peregrine* Lord *Willoughby* of *Eresby*, *Henry* Lord Viſcount *Tadcaſter*, *Henry* Lord Viſcount *Lonſdale*, *Talbot* Lord Viſcount *Longueville*, *Charles* Lord Viſcount *Townſhend*, *Laurence* Lord Viſcount *Say* and *Seal*, *George* Earl of *Halliſax*, *John* Earl of *Briſtol*, *Heneage* Earl of *Alesford*, *Charles* Earl of *Tankerville*, *Lewis* Earl of *Rockingham*, *James* Earl of *Carnarvon*, *Thomas* Earl of *Strafford*, *Archibald* Earl of *Ilay*, *Henry* Earl of *Deloraine*, *Hugh* Earl of *Loudoun*, *Thomas* Earl of *Hadington*, *John* Earl of *Rothes*, *Hugh* Earl of *Cholmondley*, *Francis* Earl of *Godolphin*, *John* Earl *Poulet*, *John* Earl of *Greenwich*, *Henry* Earl of *Grantham*, *William* Earl of *Jerſey*, *Edward* Earl of *Oxford*, *George* Earl of *Warrington*, *Richard* Earl of *Scarborough*, *Henry* Earl of *Portland*, *Robert* Earl of *Holderneſs*, *Henry* Earl of *Rocheſter*, *Daniel* Earl of *Nottingham*, *Charles* Earl of *Radnor*, *Richard* Earl of *Burlington*, *Arthur* Earl of *Angleſey*, *Edward* Earl of *Clarendon*, *Thomas* Earl of *Stamford*, *Charles* Earl of *Mancheſter*, *George* Earl of *Northampton*, *John* Earl of *Leiceſter*, *Scroop* Earl of *Bridgwater*, *Lionel* Earl of *Dorſet* and *Middleſex*, *Henry* Earl of *Lincoln*, *Thomas* Earl of *Pembrook*, *James* Earl of *Derby*, *William* Marquis of *Annandale*, *Thomas* Duke of *Newcaſtle*, *Evelin* Duke of *Kingſton*, *Robert* Duke of *Ancaſter* and *Keſteven*, Lord Gr. Chamberlain, *Henry* Duke of *Kent*, *John* Duke of *Roxburgh*, *James* Duke of *Montroſs*, *John* Duke of *Montagu*, *John* Duke of *Buckingham* and *Normanby*, *John* Duke of *Marlbrough*, *Charles* Duke of *Shrewſbury*, *Charles* Duke of *St. Albans*, *Charles* Duke of *Richmond*, *Charles* Duke of *Somerſet*, *Charles* Duke of *Bolton*, Lord Chamberlain of his Majeſty's Houſhold, *William* Duke of *Devonſhire*, Lord Steward, *Charles* Earl of *Sunderland*, Lord Privy Seal; and laſt of all the Lord High Steward ſaid, My Lords, I am of Opinion that *George* Earl of *Wintoun* is Guilty of the High-Treaſon, whereof he ſtands impeach'd, upon my Honour.

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[*Then Proclamation was made for Silence, and to bring forth the Priſoner.*]

L. H. Steward. *George* Earl of *Wintoun*, the Lords, having conſider'd of the Charge, the Evidence againſt you, and your Defence, are of Opinion, that your Lordſhip is Guilty; and have found your Lordſhip guilty of the High-Treaſon of which you ſtand impeach'd.

[*Then the Lords return'd to their Houſe.*]

Monday, *March* 19. the third Day, the Priſoner was brought to the Bar.

L. H. Steward. *George* Earl of *Wintoun*, Your Peers, having convicted you of High-Treaſon, I am now to ask your Lordſhip, if you have any Thing to offer, why Judgment of Death ſhould not paſs upon you according to Law?

The Priſoner ask'd, what he has to ſay in Arreſt of Judgment.

Clerk from L. Wintoun. I have a Point to offer to your Lordſhips, to ſhew that I am ſuch a Perſon, againſt whom, by Law, Judgment ought not to be given.

L. H. Steward. Will your Lordſhip ſtate the Point?

Clerk from L. Wintoun. I don't know what your Lordſhip means.

Sir *Conſt. Phipps.* If your Lordſhips pleaſe, we have a Point of Law humbly to offer to your Lordſhips, If——

Att. Gen. I humbly inſiſt, That they are not to ſpeak, unleſs there be a Point ſtated by the Priſoner, and which your Lordſhips ſhall think to be a Point of Law.

Mr. *Cowper.* We are ſurpriz'd to find that Gentleman ſhou'd preſume to ſpeak without your Lordſhips Direction: He cannot but know that the Priſoner is to propound the Queſtion in Law.

L. H. Steward. Sir *Conſtantine Phipps*, you know the Practice to be ſo: The Point muſt be firſt ſtated by the Priſoner, before you can ſpeak to it.

The Point of Law muſt be ſtated by the Priſoner.

Sir *Conſt. Phipps.* My, Lords, if I had been heard but ten Words more——

Sir *W. Thompſon.* We humbly inſiſt, That that Gentleman be not heard one Word more.

[*Here, upon the Motion of Lord* Ilay, *the Lords adjourn'd to their Houſe, and return'd in half an Hour.*]

L. H. Steward.

Whether he be *Non Compos*, is Matter of Fact, and not of Law.

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L. H. Steward. My Lord *Wintoun*, the Lords have conſider'd of the Matter you mov'd in Arreſt of Judgment, *viz.* That you are not ſuch a Perſon againſt whom Judgment of Death for High-Treaſon ought to be pronounc'd; and are of Opinion, That this is Matter of Fact, and not of Law; and that the Lords think you are ſuch a Perſon, againſt whom Judgment ought to be given in this Caſe. I am order'd alſo to reprimand you, Sir *Conſtantine Phipps*, for preſuming to be ſo forward to ſpeak for the Priſoner at the Bar before a Point of Law was ſtated, and you had Leave to ſpeak to it; and your Fault is the greater, becauſe you cou'd not but know that this is a Matter of Fact, and that the Law is not doubtful one way or other, the Fact being ſuppos'd. My Lord *Wintoun*, I am again allow'd to ask your Lordſhip, if you have any Thing further to alledge, why Judgment of Death ſhou'd ſhould not paſs upon you?

Clerk from L. Wintoun. My Counſel are ready to offer in Arreſt of Judgment, that the Impeachment is inſufficient, becauſe the Time of committing the Treaſon is not laid with ſufficient Certainty.

L. H. Steward. Is it your Lordſhips Pleaſure, that the Counſel for the Priſoner be allow'd to ſpeak to this Point?

Lords. Ay, Ay.

L. H. Steward. Gentlemen, that are of Counſel for the Priſoner, you have Liberty to ſpeak to the Point propos'd.

Sir *Conſtantine Phipps* argues, that the Impeachment is not laid with ſufficient Certainty.

Sir *Conſt. Phipps.* "MAy it pleaſe your Lordſhips, "we humbly apprehend the "Impeachment againſt the noble Lord at the Bar, "to be inſufficient: It is ſo uncertain that no Judg- "ment can be given upon it. In Indictments, even "for Treſpaſſes, the Law requires the certain Day "when the Offence is ſuppos'd to be committed "to be alledg'd; and if a particular Day be not "laid, the Indictment is inſufficient. And if ſuch "Certainty is requir'd in Offences of the moſt Mi- "nute Nature, much more in Capital Crimes, and "eſpecially in Treaſon, with which this Noble "Lord is charg'd.

"One Reaſon why in Indictments for High- "Treaſon a certain Day ſhou'd be aſſign'd, is for "the

" the Advantage of the Priſoner, that being apprized " of the Time when thoſe Facts are ſuppoſed to " be committed, he may be the better able to make " his Defence: He may poſſibly prove he was in " another Place, or in other Company, at the " Time he is charged with committing the Trea- " ſon, or may by other Circumſtances make his " Innocence appear.

" Another Reaſon, is for the Benefit of the " Crown, that it may be known to what Time the " Forfeiture ſhall relate; for if there be no preciſe " Time alledg'd in the Indictment, the Forfeiture " can relate no farther than to the Judgment.

" Indictments have been held inſufficient for leſs " Faults, than not ſpecifying the Day; but I will " not trouble your Lordſhips with citing Authori- " ties; for there is not a Gentleman of the long " Robe but will agree an Indictment for any " Capital Offence to be erroneous, if the Of- " fence be not alledg'd to be committed on a cer- " tain Day.

" My Lords, an Attainder upon an Impeach- " ment ſubjects the Offender to the ſame Puniſh- " ment and Forfeitures, as an Attainder upon an " Indictment; and there ſhould therefore be the ſame " Certainty in one, as in the other. And if equal " Certainty be required in both, we ſubmit it to your " Lordſhips, whether this Impeachment be not " erroneous and inſufficient, there being no " certain Time alledg'd when the Treaſon or O- " vert-Acts were committed.

" The Treaſon alledg'd, is conſpiring and imagin- " ing the Death of the King; and the Impeach- " ment ſets forth, that this noble Lord did *in* " *or about the Months of September, October, or* " *November*, 1715. together with others, in the " Impeachment named, traiterouſly compaſs the " Death of his moſt ſacred Majeſty: That he did " *in or about the ſaid Months, or ſome of them*, to- " gether with the reſt, agree and confederate to levy " War againſt his Majeſty: That *in or about the ſaid* " *Months, or ſome of them*, this noble Lord, with " others, did levy War, and did march through " ſeveral Parts of the Kingdom, and did proclaim " the Pretender to be King: And that *on about the* " *9th, 10th, 11th, 12th, or 13th* of the ſaid Month

of

" of *November*, this noble Lord, with others, did " ſeize and poſſeſs themſelves of the Town of *Preſ-* " *ton*, and fought againſt his Majeſty's Forces.

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" As to the firſt Overt-Act; can any Thing be " more uncertainly alledg'd, than to ſay that the " Conſpirators did in or about the ſaid Months, " or ſome of them, and at divers other Times and " Places within this Kingdom, *confederate*, &c. to " levy War.

" The next Overt-Act, which is *actual levying of* " *War*, is not laid with greater Certainty: And as " to the third, *the proclaiming the Pretender*, there " is no certain Time or Place alledg'd when or " where the Pretender was proclaim'd, but only " that it was during their March and Invaſion. " The laſt Overt-Act, *the ſiezing of Preſton*, ſeems " to be laid with greater Certainty; but then " the Words [*on or about*] leave it at large; for " no Man can tell how many Days may be in- " cluded in theſe Words [*or about.*]

" We apprehend a Charge of this high Nature " ought not to be alledg'd with ſuch Uncertainty; " and that the Impeachment is as erroneous as " an Indictment would be. I do not pretend to " any great Skill in Parliamentary Proceedings; " but I never ſaw a Charge exhibited in any other " Court in ſo uncertain a Manner, unleſs in Libels " in the Eccleſiaſtical or Admiralty Courts, which " cannot influence the Caſe before your Lordſhips, " this being a Proceeding according to the Courſe " of the Common Law.

Mr. *William's* Argument as to the Uncertainty of the Impeachment.

Vol. vi. p. 51.

Mr. *Williams*. " I am alſo aſſign'd by your Lord- " ſhips of Counſel for this un- " fortunate Lord, and humbly inſiſt, that there is " a Defect in this Impeachment, in regard no cer- " tain Day is laid when the Treaſon is charged to " have been committed. I apprehend the Houſe of " Commons to be the Grand Inqueſt of the Nation; " and that their Impeachment is in the Nature of " an Indictment found by that Grand Inqueſt, dif- " fering from an Indictment in this Reſpect, that " an Indictment is found by the Inqueſt of a *Coun-* " *ty only*; but an Impeachment by the Grand In- " queſt of the whole Kingdom. And as the omitting " the laying a certain Day when the Treaſon was " com-

" committed, would be a material Fault in the " Caſe of an Indictment, ſo is it as material a De- " fect in the Caſe of an Impeachment.

" It will not, I preſume, be expected from us, that " we ſhould cite Precedents of Impeachments: " However, I ſhall beg leave to mention one freſh " in your Lordſhips Memories; and that is in the " Caſe of Doctor *Sacheverel.* Vol. vi. p. 52.

" The Doctor was impeach'd before your Lord- " ſhips, for ſeditious Expreſſions in two Sermons; " and in that Impeachment, the preciſe Days are " laid when the Doctor preach'd each of them. " And by the like Reaſon, I apprehend a certain Day " ought to be laid in this Impeachment, when the " Treaſon was committed. I have nothing elſe to " ſay on behalf of this unhappy Lord, unhappy as be- " ing in that doubtful State of Memory: Not *inſane* " enough to be within the Protection of the Law, " nor at the ſame Time *ſane* enough to do him- " ſelf in any Reſpect the leaſt Service whatever.

[*Here the Managers interrupted the Council.*]

L. H. Steward. Mr. *Williams*, I apprehend the Reaſon the Managers appear uneaſy with you, is, That you are going into a Matter of Fact, which you have not Leave to ſpeak to. You muſt con- fine yourſelf to the Point of Law that was ſtated.

Mr. *Williams.* " I ſhall take up no more of your " Lordſhip's Time, but humbly hope, that as in an " Indictment for Treaſon, the Want of laying a Day " when the Treaſon is charged to have been com- " mitted, is a manifeſt Error; as the conſtant Forms " of Indictments are ſo, and the Reaſon of the Law " requires they ſhould be ſo; therefore for want " of the like Certainty in this Impeachment, we in- " ſiſt, with great Submiſſion, that the Impeachment " is defective, and pray that the Judgment againſt " this unfortunate Lord may be arreſted.

Mr. *Walpole.* " MY Lords, the Counſel for the " Noble Lord at the Bar ſeem " to forget in what Court they are: They have ta- " ken up ſo much of your Lordſhips Time in quo- " ting Authorities, to ſhew what could quaſh an In- " dictment in the Courts below, that they ſeem to " forget Mr. *Walpole* anſwers the Priſoner's Counſel.

" forget they are now in a Court of Parliament, and
" on an Impeachment of the Commons of *Great*
" *Britain*. Should we admit all that they have of-
" fered, it would not follow that the Impeachment
" is inſufficient. Neither of the learned Gentlemen
" have offered to produce one Inſtance, where the
" Sufficiency of an Impeachment was called in
" queſtion from the Generality of the Charge: Nor
" do the Commons think it neceſſary, in Juſtice to
" the Noble Lord at the Bar, that a certain Day
" ſhould be mentioned in the Impeachment. From
" the Nature of the Crime, and the Evidence that
" has been given, there can be no Hardſhip for
" want of fixing a Day on which the Treaſon is
" committed. He is charged with being concerned
" in a notorious Rebellion: The Time mentioned
" in the Impeachment is the Months of *September*,
" *October*, and *November*, and particularly the 9th,
" 10th, 11th, 12th, and 13th Days of *November*. He is
" charged with being concern'd from the Time he
" left his Houſe, till he was taken; and all this hath
" been amply proved. And how can this Noble
" Lord ſuffer, becauſe no particular Day is men-
" tioned, after he continued in Rebellion for ſo ma-
" ny Months and Days, and marched through ſo
" many Counties? But, my Lords, I have a Prece-
Vol. vi. p. 53. " dent in my Hand, *The Tryal of the Earl of Staf-*
" *ford*, in which Impeachment the Time was more
" uncertain; and yet that was never attempted to be
" offered in Arreſt of Judgment. The Words in
" that Impeachment were, *That for divers Years laſt*
" *paſs'd, a damnable Conſpiracy had been carried on,*
" *&c.* And when they come to the particular
" Charge, all that is ſaid, is, *That within the Time*
" *aforeſaid, &c.* that is, ſome Time within divers
" Years laſt paſs'd; whereas in this Impeachment
" there are three Months named, in which the Trea-
" ſon charged in the Impeachment was committed:
" So that here the Commons are ſufficiently juſtify'd
" in the Articles exhibited by them. And I hope it
" will never be allowed as a Reaſon, that what
" quaſhes an Indictment in the Courts below, will
" make an Impeachment inſufficient brought by the
" Commons of *Great Britain*.

Att.

Att Gen. "MY Lords, we are upon an Impeachment, and not an Indictment. The "Courts below have set Forms, which have prevailed for a long Course of Time, and are thereby become the Forms by which those Courts are "to govern themselves; but it was never thought "that their Forms had any Influence on the Proceedings of Parliament. In the Reign of *Richard* II. "it is said in the Records of Parliament, *That Proceedings in Parliament are not to be governed by "the Forms of* Westminster-Hall. And though it is "usual in the Courts below to alledge a certain Day, "yet they add [*and at divers other Days and Times*;] "and that Day which is laid, is not material; for they "are not bound to prove the Crime committed on "that Day, but may prove the Defendant guilty at "any Time, either before or after the Day laid "in the Indictment.

Mr. *Attorney General's* Answer to the Prisoner's Counsel. Vol. vi. p. 53.

"As to Dr. *Sacheverel's* Case, there was an Exception taken to the Impeachment for Uncertainty; and it was argued from the Forms of "the Courts in *Westminster-Hall, That where Indictments were for Words spoke or writ, the Words "must be laid as they were spoke or wrote, according "to the Opinions of the Judges:* But it was resolved "to be otherwise in the Court of Parliament; and "they were not bound but by their own Forms.

"As to their Objection, *That there is no Time "laid for some of the Overt-Acts*, I think there is a "certain Day charged when *Preston* was seiz'd; and "in the inferior Courts it is held, that it is not necessary there should be a Day and Place alledged "for every Overt-Act. We think, therefore, this "Objection has no Weight, especially in Case of an "Impeachment. Your Lordships have already given Judgment against six upon this Impeachment: "It is warranted by Precedents in Parliament. Therefore we insist that the Articles are good in Substance, and according to the Forms of Parliament."

Mr. *Cowper.* "IF the Commons, in preparing Articles of Impeachment, should govern themselves by Precedents of Indictments, "they would depart from the antient and constant

Mr. *Cowper's* Answer to the Prisoner's Counsel.

" Practice of Parliament. The Form of an Im-
" peachment has very little Reſemblance to that of
" an Indictment; and, I believe, the Commons will
" endeavour to preſerve the Difference, by adhering
" to their own Precedents.

" They will not find one Precedent in Caſe of
" an Impeachment of High Treaſon, where there
" has been a certain Day or Time laid when the
" Treaſon was committed; and in inferior Courts,
" it ſeems to be rather Form than Subſtance."

Sir *William Thompſon*'s Anſwer to the Priſoner's Counſel.

Vol. vi. p. 54.

Sir *W. Thompſon.* " AS to the Law, we muſt refer
" to the Forms of Proceed-
" ings in the Court of Parliament, which is the Law
" of Parliament, and Part of the Law of the Land.
" Your Lordſhips will be governed by the Forms
" of your own Court, as the Courts below are by
" theirs; which Courts differ one from the other in
" many Reſpects, as to their Forms of Proceedings;
" and the Practice of each Court is eſteem'd the Law
" of that Court. My Lords, here is one of the
" Treaſons alledged to be within the Compaſs of
" five Days, namely, the ſeizing of *Preſton*, and en-
" gaging the King's Troops there. If his Lordſhip
" could have ſhewn he had been elſewhere during
" that Time, it might have been of Service to him:
" But unfortunately for him, your Lordſhips have
" found him guilty within thoſe five Days. And if
" it be demanded, to what Time the Forfeiture of
" the Defendant's Eſtate ſhall relate; it is anſwer-
" ed, if it be taken the moſt favourably for the De-
" fended, the Conviction ſhall operate ſo, as to
" make the Forfeiture only from the laſt of theſe
" Days; and I don't apprehend any other Inconve-
" nience. But to infer, that for this Reaſon no
" Judgment at all ſhall be given upon this Convic-
" tion, where material and ſubſtantial Part of the
" Iſſue is found, ſeems not to be a right Conſequence.
" For theſe Reaſons, and what have been mention'd
" before this Exception, has no Weight; we hope
" your Lordſhips will over-rule it."

L. H. Steward. Gentlemen of the Houſe of Commons, I ſuppoſe you don't oppoſe the Counſel's replying to you? If you have any Thing to offer, you may be heard to it afterwards.

Att.

Att. Gen. We don't object to it, if the Commons have a Liberty of ſpeaking afterwards, and cloſing; which they inſiſt is their Right.

L. H. Steward. Gentlemen, you may reply.

Sir *Conſt. Phipps.* "I Don't remember I ſaid the Day laid in the Indictment "was material; for I never thought it ſo material "that there was a Neceſſity to prove the Treaſon to "be committed upon that very Day: But I conceive "the Day laid in an Indictment ought to be very "near the Time, if not upon the very Day the Treaſon "is ſuppoſed to be committed: And I take the con-"ſtant Practice to be ſo.

Sir *Conſtantine Phipp's* Reply to the Managers. Vol. vi. p. 55.

"All the Gentlemen who ſpoke in anſwer to me "have admitted, that in Indictments for Treaſon, "a certain Day ought to be alledged; but the Ho-"nourable Gentleman who ſpoke firſt, makes a "Difference between an Indictment and Impeach-"ment; becauſe an Impeachment is a Parliamen-"tary Proceeding, and the Parliament are not tied "up to ſuch ſtrict Forms as the Courts below. But "I ſubmit it to your Lordſhips Judgment, whether "an Impeachment by which a Noble Peer is to be "attainted, ought not to be as certain as an Indict-"ment by which a Commoner is to be attainted? "and whether by the *Lex Parliamentaria*, as much "Certainty is not required in one Caſe as the other? "As to the Impeachment of the Lord *Stafford*, that "began with an Account of the Plot in general; "and in that Caſe a general Allegation was ſuffi-"cient: But whether the particular Part which my "Lord *Stafford* had in that Plot be not more cer-"tainly alledged, I cannot take it upon my Memo-"ry to ſay; nor is it material, for it is admitted, "that no Objection was made to that Impeachment, "for the Uncertainty of the Charge. If ſuch an "Objection had been made and over-rul'd, it would "have been a full Anſwer to us; but there being "no notice taken of it, our Objection is as ſtrong, "as if that Caſe had never happen'd. As to that "Part of the Impeachment which relates to the ta-"king of *Preſton*, though that ſeems more certain "than any other Overt-Act, yet the Words [*or about*] "leave it at large, and render it uncertain.

Mr. *Williams*'s Reply to the Managers.

Mr. *Williams*. "I Would beg Leave to obſerve, that only one Precedent has been "cited againſt us, (the Impeachment of the late Lord "*Stafford*;) and it muſt be ſubmitted to your Lord-"ſhips, how far one ſingle Precedent will be a Proof "of the Courſe and Cuſtom of Parliamentary Im-"peachments, eſpecially when it appears that the "Objection was not made in that Caſe? and whe-"ther repeated Acts are not neceſſary to prove this, "as well as other Cuſtoms? and that if this were "*Lex & Conſuetudo Parliamenti*, whether it would "not be an eaſy Matter to cite many Inſtances of "it? and if it be not neceſſary in this Caſe to cite "further Precedents, inaſmuch as the Lord *Staf-*"*ford*'s Caſe has loſt ſome of its Force by the latter "Precedent of Dr. *Sacheverel*'s Caſe? and even "in the Caſe of a Miſdemeanor, a certain Day is "laid in the Impeachment, when it is charged to "have been committed? It has been objected by the "learned Managers, that in Indictments it is uſual-"ly charged, that the Party committed the Treaſon "*diverſis diebus & viribus*; which is as uncertain "as this Impeachment: But it muſt be obſerv'd, that "beſides theſe Words there is a certain Day laid "when the Treaſon was committed; and the Words "*diverſis diebus & viribus* are but Surpluſage, the "Indictment would be good without them. It has "been objected alſo, That if a Day certain be "mentioned in an Impeachment, or Indictment, it "is not material; for if the Treaſon be proved to "have been committed on any other Day, the Party "will be found Guilty: And this I admit. But "what I humbly inſiſt on, is, That it is the conſtant "Courſe to mention a Day certain; and the Day "mentioned, is uſually the very Day on which the "Treaſon was committed. And to know this, is of "very great Uſe to the Party indicted or impeach-"ed, and may very much aſſiſt him in his Defence. "The mentioning a Day certain alſo is manifeſt-"ly for the Advantage of the Crown; in regard the "Forfeiture of the Land to the King ſhall relate to "the Day laid in the Impeachment, or Indictment; "from whence I beg Leave to infer, that the men-"tioning a Day certain in the Impeachment is ma-"terial; that the Omiſſion of it renders the Im-

Vol. vi. p. 56.

"peachment

" peachment defective: And, therefore, I humbly " pray your Lordſhips to arreſt the Judgment.

Att. Gen. " MY Lords, the learned Gentlemen " now agree, that the particular " Day in an Indictment is but Form; and that the " Fact may be proved any Day before, or after; con- " ſequently the Priſoner gets or loſes nothing by " having a Day charged or omitted. He muſt pro- " vide for his Defence, as if no Day was laid: And " ſince it is immaterial in Indictments, it muſt be ſo " in Impeachments. As to the Anſwer given to " my Lord *Stafford*'s Caſe, that this Point paſſed " *ſub Silentio*, if that Impeachment had not been " thought good, he had the Aſſiſtance of learned " Counſel, well able to adviſe him, and who cer- " tainly would have taken the Exception. Here is " no Uncertainty that can be to the Diſadvantage " of the Priſoner: The Impeachment is agreeable " to the Forms of Parliament; he has pleaded to it, " and your Lordſhips have found him guilty." Mr. *Attorney General* cloſes the Argument.

L. H. Steward. My Lord *Wintoun*, your Counſel have been heard: Have you any Thing elſe to offer in Arreſt of Judgment?

L. Wintoun. If you pleaſe to ask my Counſel, they will tell you.

L. H. Steward. You have been told often, that the Point you would have your Counſel ſpeak to, muſt be ſtated and propoſed by yourſelf.

L. Wintoun. Since your Lordſhip won't allow my Counſel, I don't know nothing.

[*Here the Houſe being adjourned about three o' Clock, return'd again at Five.*]

L. H. Steward. " GEORGE Earl of *Wintoun*, I " have already acquainted you, " that your Peers have found you guilty. Your " Lordſhip afterwards moved in Arreſt of Judgment; " which Motion has been diſallow'd. The next " Step is to proceed to Judgment; which my Office " obliges me to pronounce; but I am very far from " taking any Satisfaction in it. L. H. *Steward's* Speech upon paſſing Sentence.

" My Lord, your Crime is the greateſt known to " the Law of this, or any other Kingdom; and it is Vol. vi. p. 57

" the moſt odious Species of that Crime: A Conſpi-
" racy, manifeſted by an open Rebellion, to depoſe
" and murder that ſacred Perſon who ſuſtains and
" is the Majeſty of the Whole; in attempting whoſe
" precious Life, you ſtrike at the moſt Noble Part,
" the Seat of Life, and Spring of all Motion in this
" Government: Which may properly be called a
" Deſign, not only to murder the King, but the
" whole Body Politick of the Kingdom.

" Succeſs in your Treaſon muſt infallibly have
" eſtabliſhed Popery; which never fails to bring with
" it a Civil, as well as Eccleſiaſtical Tyranny; and
" which can never take place till the preſent Con-
" ſtitution is annihilated; and your Crime is the
" more aggravated, as it is complicated with that
" horrid and crying Sin of murdering many, who are
" not only innocent, but meritorious

" And if Pity be due to ſuch as ſuffer for their
" Crimes, a much greater Share of Compaſſion is
" owing to them who have loſt their Lives by the
" Crimes of other Men: Thoſe who promoted the
" late Rebellion, have ſo many Murders to an-
" ſwer for, as there were Subjects killed. Your
" Lordſhip will be under a great Deluſion, if you
" look on thoſe who fell at *Dumblain* or *Preſton*,
" on the Side of the Laws, and in Defence of the
" Government, as ſlain in lawful War.

" Your Crime is made yet redder, in ſhedding the
" beſt Blood in the Kingdom, the brave common
" Soldiers, and thoſe gallant Heroick Officers, who
" continued faithful to Death in Defence of the
" Laws: What Blood can be better than that
" which is ſhed in the Cauſe of the true Religion,
" and the Liberties of its Country?

" Believe it, notwithſtanding the unfair Arts uſed
" to ſtir up a pernicious Exceſs of Commiſeration
" towards thoſe who have fallen by the Sword of
" Juſtice, the Life of one Loyal Subject is more
" precious in the Eye of God, and all conſidering
" Men, than the Lives of many Rebels and Parri-
" cides.

" There is this further Malignity in your Lord-
" ſhip's Offence of open Rebellion, That it is too
" notorious to be paſs'd by unobſerv'd; and a Go-
" vernment is reduc'd to this Dilemma, If it be
" not Puniſh'd, the State is endanger'd by giving an

" Example

" Example that it may be attack'd with Impunity:
" And if it be puniſh'd undeſerv'd, Clamours are
" rais'd of the Cruelty of thoſe in Power. The
" Enemies of the Government make unſeaſonable
" and unlimitted Encomiums upon Mery and For-
" giveneſs, which will have an Effect upon ſilly and
" undiſtinguiſhing People; ſo that Rebels have the
" Satisfaction of hurting the Government a little,
" even by their Fall: But a wiſe Government has
" this Conſolation, after it has temper'd Juſtice
" with Mercy, in ſuch proportion as ſound Diſcre-
" tion directs, that ſuch Seeds of Diſcontent take
" root on very ſhallow Soil only; and after they
" have made a weak Shoot, wither and come to
" nothing.

" How confidently was it given out by the Fac-
" tion, before your Lordſhip's Tryal, That the ſur-
" render at *Preſton* was made on Aſſurances or
" Hopes of Pardon: Whereas, it appears that Fear
" was the only Motive to it. The evil Day was
" deferr'd, and the Rebels rightly judg'd, that fewer
" wou'd die by the Way they choſe, than if they
" had ſtood an Attack: They were aw'd by the
" experienced Courage of the King's Troops, and
" the ſuperior Genius and Spirit of his Majeſty's
" Commanders, and were, in Truth, never flatter'd
" with any other Terms than of ſurrendering as
" Rebels and Traytors; their Lives were only ſpar'd
" till his Majeſty's Pleaſure cou'd be known.

" It is a Debt due to thoſe brave Soldiers, to
" whom their King and Country owe more than
" can be expreſs'd, that their Victory ſhou'd be
" vindicated from Detraction, and preſerv'd unſul-
" lied by the Tongues of Rebels and their Accom-
" plices.

" And give me Leave to obſerve, That this En-
" gine of a lying Tongue, which ſets the World on
" Fire, has been of prodigious Uſe to the Rebels
" and their Friends, not only ſince and during the
" Rebellion, but while it was forming.

" Falſe Facts, falſe Hopes, and falſe Charac- Vol. vi. p. 58.
" ters, have been more than half the Scheme they ſet
" out with, and yet ſeem to depend upon.

" It has been rightly obſerv'd, That your Lord-
" ſhip does not ſo much as inſiſt on what cou'd
" alone excuſe you, Your being forc'd into the

" Rebellion, and remaining under that Force: And " if you had, it has been clearly prov'd that your " Lordſhip was active and forward, and ſo conſi- " derable in a Military Capacity, as to command a " Squadron.

" I ſhall conclude with exhorting your Lordſhip, " That now the Time is come, when the Veil of " Partiality ſhould be taken from your Eyes: It " muſt be ſo when you come to die. You ſhou'd " think, if poſſible, with Clearneſs and Indifference, " which muſt produce a hearty deteſtation of your " Crime; and as you are a Proteſtant, in all Pro- " bability, make you a ſincere Penitent; for you " were engaged in an Enterprize, which, if it had " ſucceeded, muſt have deſtroy'd your Holy Reli- " gion. It only remains, that I pronounce that " Sentence which the Law preſcribes, and which " ſufficiently ſhews what Thoughts our Anceſtors " had of the Crime you are convicted, *viz.*

" *That you*, George *Earl of* Wintoun, *return to* " *the Priſon of the* Tower *from whence you came*; " *from thence you muſt be drawn to the Place of Exe-* " *cution*; *when you come there you muſt be Hang'd* " *by the Neck, but not till you be Dead, for you muſt* " *be cut down alive*; *then your Bowels muſt be taken* " *out, and burnt before your Face*; *then your Head* " *muſt be ſever'd from your Body, and your Body di-* " *vided into four Quarters*; *and theſe muſt be at the* " *King's Diſpoſal.*

And God Almighty be merciful to your Soul.

Then the Lord High Steward broke his Staff, and declar'd his Commiſſion was diſſolv'd; and the Lords adjourn'd to the Houſe above.

The Earl of *Wintoun* remain'd a Priſoner in the *Tower* till the 4th of *Auguſt*, 1716. when he made his Eſcape, and went over into *France*.

Vol. vi. p. 58. N. B. *The Tryal of* Francis Francia, *a Jew, at the* Old-Bailey, *for High Treaſon*, Jan. 22. 1716. 2 Geo. I. *being already Printed in the Abridgments*, Vol. vi. Pag. 670. *is here purpoſely omitted.*

PRO-

PROCEEDINGS *in Parliament againſt* ROBERT *Earl of* OXFORD, *upon an Impeachment for High Treaſon, and other High Crimes and Miſdemeanors.* 3 Geo. I. 1717.

Vol. vi. p. 102.

ON the 10th of *June*, 1715. Mr. *Walpole* mov'd to impeach the Lord Viſcount *Bolingbroke* of High Treaſon, and other High Crimes and Miſdemeanors; And the ſame Day, the Lord *Coningsby* mov'd to impeach *Robert* Earl of *Oxford* of High Treaſon, and other High Crimes and Miſdemeanors; which Impeachments were at length reſolv'd on, but not without ſome Oppoſition; for ſeveral Members thought the Evidence, produc'd againſt theſe Noble Lords, not ſufficient to ground an Impeachment of High Treaſon upon.

The Earl of *Oxford* Impeach'd, *June* 10. 1715.

On the 9th of *July* following, the Lord *Coningsby* carried up the Articles of Impeachment againſt the Earl of *Oxford* to the Houſe of Lords, and pray'd that he might be ſequeſtred from Parliament, and committed to cloſe Cuſtody. Whereupon the Lords order'd him into the Cuſtody of the Black Rod; and on the 16th of the ſame Month he was committed to the *Tower*.

The Commons ſeem'd ſatisfied with the Confinement of the Earl, and did not diſcover any Inclination to proceed againſt him. But the Earl finding his Health impair'd by lying in the *Tower*, petition'd the Houſe of Peers, in *May* 1717. That his Impriſonment might not be indefinite, but that he might either be brought to his Tryal, or diſcharg'd. Upon the reading his Petition, it was aſſerted by ſome Lords who were well acquainted with Parliamentary Proceedings, That the Impeachment was deſtroy'd by the Prorogation that had happen'd ſince the Impeachment was brought up; but upon a Diviſion this Opinion was over-rul'd, though the Earl of *Nottingham* urg'd very ſtrong Reaſons for the Support

He Petitions the Houſe of Peers to be Diſcharg'd, or Try'd.

Support of it, and afterwards enter'd his Proteſt. The Duke of *Buckingham* then moved to appoint a ſhort Day for the Earl's Tryal; and the 13th of *June* being fix'd; upon the Application of the Commons, the Time was enlarg'd to the 24th, when the Lords came in the uſual Order from the Chamber of Parliament to the Court erected for the Tryal at *Weſtminſter-Hall.*

He is brought to his Tryal on the 24th *June*, 1717.

The Commiſſion having been read, conſtituting *William* Lord *Cowper* Lord Chancellor of *England*, Lord High Steward *pro hac vice*, and his Lordſhip being afterwards placed in his Chair on the ſecond Step of the Throne, with the uſual Ceremony, the Lieutenant of the *Tower* was order'd to bring his Priſoner, the Earl of *Oxford*, to the Bar; where the Earl kneeling, after ſome Time, was order'd by the Lord High Steward to riſe, and then the Articles of Impeachment were read by the Clerk, entitled, *Articles of Impeachment of High Treaſon, and of other High Crimes and Miſdemeanors, againſt* Robert *Earl of* Oxford *and Earl* Mortimer.

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Preamble to the Articles of Impeachment.

Preamble to the Articles of Impeachment.

THE Preamble to the Article ſets forth, That whereas many ſolemn Treaties and Alliances had been entred into between the Crown of *England* and other Powers, for their mutual Safety againſt the common Danger that threatened *Europe* from the immoderate Growth of the Power of *France*; And whereas, the preventing the Monarchy of *Spain* falling into the Hands of the Houſe of *Bourbon*, had occaſioned ſeveral Treaties among the Allies, particularly, the Partition Treaty, whereby a ſmall Part only of the Dominions of *Spain* was allotted to the Houſe of *Bourbon*, was condemn'd by Parliament as fatal to the Peace of *Europe*; And whereas the Duke of *Anjou*, Grandſon to the *French* King, on the demiſe of *Charles* II. King of *Spain*, took Poſſeſſion of the whole *Spaniſh* Monarchy; whereby the Balance of Power, the Proteſtant Religion, and the Liberties of Europe were endangered; and thereupon the late Emperor *Leopold*, King *William* III. and the States-General, did in the Year 1701. enter into an Alliance for procuring an equitable and reaſonable Satisfaction to his Imperial Majeſty, for

for his Pretenſion to the *Spaniſh* Succeſſion; and that *Britain* and the *States* might obtain a ſufficient Security for their Kingdoms, Provinces, and Dominions, and for the Navigation and Commerce of their Subjects; and did engage to aſſiſt each other with all their Forces, according to a Specification to be agreed upon in a peculiar Convention for that Purpoſe; and particularly, that the ſaid Confederates, ſhould uſe their utmoſt Endeavours to recover the *Spaniſh* Low Countries, that they might be a Barrier for the United Provinces againſt *France*; as likewiſe the Dutchy of *Milan* and its Dependances, as a Fief of the Empire, and contributing to the Security of his Imperial Majeſty's hereditary Dominions, beſides, the Kingdoms of *Naples* and *Sicily*, and the Lands and Iſlands on the Coaſt of *Tuſcany*, that belong'd to *Spain*; and that the ſaid Confederates ſhould communicate their Deſigns to each other, as well in relation to the Actions of the War, as all other Things, wherein the common Cauſe was concern'd; and that none of the Parties ſhould treat of Peace with the Enemy, unleſs jointly, and by a Communication of Councils; and that no Peace ſhould be made, unleſs an equitable and reaſonable Satisfaction for his Imperial Majeſty; and a particular Security of the Kingdoms, Provinces, Dominions, Navigations, and Commerce for *Great Britain* and that of the States, ſhould be firſt obtain'd; and unleſs Care was taken, that the Kingdoms of *France* and *Spain* ſhould never be united under the ſame Government; or that one and the ſame Perſon ſhould be King of both Kingdoms; and particularly, that the *French* ſhould never be permitted to traffick to the *Spaniſh Weſt-Indies*, directly or indirectly; nor unleſs the Subjects of *Great-Britain* and the States ſhou'd be permitted to enjoy all the Advantages, in point of Trade to the Dominions of *Spain*, they did at the Death of King *Charles* II. or at any Time before: And whereas a defenſive Alliance was alſo concluded between *Great-Britain* and the *States-General* in *November* 1701. for their mutual Security; wherein it was agreed, That in caſe the ſaid Allies ſhould be jointly engag'd in War, there ſhould be an Offenſive, and Defenſive, and Perpetual Alliance between them; and that when the War was begun, the Confederates ſhould act in Concert accord-

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ing to the 7th and 8th Articles of the Treaty of the 3d of *March* $16\frac{77}{78}$, between *England* and *Holland*, which was thereby renew'd and confirm'd; and no Truce, or Peace, or Suſpenſion of Arms, ſhould be negotiated but according to the 9th and 10th Articles of that Treaty, by which it was agreed, That when the two Allies were once in open War, it ſhould be lawful for neither of them, afterwards, to come to a Ceſſation of Arms with the Enemy, without it were done conjointly and with common Conſent; that no Negotiation of Peace ſhould be ſet on foot by one of the Allies, without the Concurrence of the other; and that each Ally ſhould impart to the other every Thing that paſſed in the Negotiation: And whereas the French King, by ſeizing the Ports of *Spain* and the *Spaniſh Weſt-Indies*, did obſtruct the Freedom of Navigation and Commerce, and had proclaim'd the pretended Prince of *Wales* King of *England*, *&c.* and influenc'd *Spain* to concur in the ſame Affront, the late Queen found herſelf oblig'd, in order to vindicate the Honour of the Crown, and prevent the Miſchiefs that threatned *Europe*, to declare War againſt *France* and *Spain* in the Year 1702. and his Imperial Majeſty, the States General, the German Princes, the Duke of *Savoy*, *&c.* became Confederates in the ſaid War; and by a Treaty, enter'd into in *May* 1703. between the Emperor, the Queen of *Great-Britain*, the States-General, and the King of *Portugal*, it was ſtipulated, That no Truce or Peace ſhould be made, but by the mutual Conſent of all the Confederates, while any Prince of the Line of *France* continued in *Spain*; and in the Treaty of *Nordlingen*, ratified by her Majeſty, it was agreed, That no particular Treaties ſhould be made, but the Peace ſhould be jointly treated of, and not be concluded without obtaining, as far as poſſible, the Reunion of the Lands belonging to the Circles, and the Security of the Aſſociated Circles was abſolutely provided for: And whereas her late Majeſty, and the States, by another Treaty, in *June* 1703. confirm'd all former Treaties between them, and agreed never to make Peace, or a Ceſſation of Arms, but in Conjunction and by common Conſent: And whereas the ſaid War was carried on for many Years with Vigour and Unanimity, and a vaſt Ex-

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pence of Blood and Treaſure by the Allies; for the Support of which, many Millions were granted by the Parliament of *England*, who not only approv'd the Neceſſity and Juſtice of the War, but frequently gave their humble Advice to the Throne, That no Peace cou'd be ſafe, honourable, or laſting, ſo long as *Spain* and the *Weſt-Indies* continued in Poſſeſſion of any Branch of the Houſe of *Bourbon:* And whereas it had pleaſed God to bleſs the Confederate Arms, under the Command of their Great and Victorious General, the Duke of *Marlbrough*, with unparalell'd Succeſſes, and the Glory of their Arms, and the Reputation of *Great-Britain* in particular, was raiſed to an higher Pitch than in any former Age: And whereas, by the Treaties with *France* in the Years 1709 and 1710. the Reſtitution of *Spain* and the *Indies* was laid down as a firm and immoveable Foundation of thoſe Negotiations, and there remain'd no queſtion of it with the Miniſters of the Allies, or thoſe of *France*, but touching the Security for its Execution; and the Conferrences being broken off by *France*, without giving any Satisfaction therein, her Majeſty, in Conjunction with her Allies, renew'd their Reſolutions to continue to puſh the War with Vigour, and to make all poſſible Efforts, as the only Means left to force a good and general Peace; and the Queen, in her Speech of the 15th of *November*, 1709. taking Notice of the endeavours of the Enemy to amuſe and create Jealouſies among the Allies, during the late Negotiations, expreſs'd her Reſentment thereat, and recommended the carrying on the War with Vigour, that ſhe might put the laſt Hand to that great Work of reducing the exorbitant Power of *France:* And whereas God was pleas'd afterwards to bleſs the Confederate Arms, under that conſummate General the Duke of *Marlborough*, with new and ſignal Conqueſts, the Reduction of *Tournay*, the Victory of *Bloregnies*, or *Malplaquet*, the taking of *Mons*, *Doway*, *Bethune*, *St. Venant*, and *Aire*, and the penetrating the *French* Lines; and from the proſperous Condition of the Allies, there remain'd nothing in Appearance that cou'd prevent their reaping the Fruits of all their Victories in a ſpeedy and honourable Peace, but the Diſunion of the Confederacy: And whereas the ſaid Earl, with other evil-diſpos'd Perſons,

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ſons, Enemies to their own Country and the common Liberties of *Europe*, having by wicked Arts inſinuated themſelves into the Favour of the late Queen, and procur'd themſelves Admiſſion into her Council, and into Places of the higheſt Truſt, and prevail'd on her to diſſolve the Parliament that had expreſs'd a true Zeal for the common Cauſe: And whereas the ſaid Earl and his Accomplices had form'd a treacherous Correſpondence with the Emiſſaries of *France*, who tranſmitted from *France* to *England*, certain Propoſitions ſign'd by Monſieur *de Torcy*, Secretary to the French King, in *April* 1711. to be the Baſis of a Treaty of General Peace; and her Majeſty having been prevail'd on by the ſaid Earl, to renew the ſame, ſhe afterwards communicated them to the Miniſters of *Holland*, declaring, That ſhe was reſolv'd in making Peace, as well as War, to act in perfect Concert with the States; and the Grand Penſionary and other Miniſters of the States thereupon anſwer'd, That they deſir'd equally with *Britain*, to have a general and laſting Peace; and declar'd they were ready to join with her Majeſty in all proper Meaſures to procure it; but deſir'd that *France* would explain herſelf more particularly upon the Points therein contain'd, and impart the Plan to the Allies; after which a more particular Negotiation might be enter'd into: Notwithſtanding all which premiſſes,

The Articles of Impeachment.

I. He, the ſaid Earl, having no Regard to the Honour or Safety of her late Majeſty, or her Kingdoms, or the many Solemn Engagements ſhe was then under to her old Allies, or to the common Liberties of *Europe*, but being devoted to the French King the common Enemy, although he was then Lord Treaſurer, and a Privy Counſellor, in breach of his Oath, and in Defiance of the ſeveral Treaties made with the Allies, the frequent Advices of Parliament, and the Declarations of her Majeſty from the Throne, and particularly in Defiance of a late Treaty to act in Concert with the States, did, in the Months of *July* or *Auguſt* 1711. maliciouſly form a treacherous Confederacy with other evil-diſpos'd Perſons of her Majeſty's Privy Council, to make a ſeparate and deſtructive Peace between *Great Britain* and *France*, without communicating

ſame

the ſame to her Allies; and did adviſe her Majeſty to ſend *Matthew Prior* Eſq; to *France*, to make Propoſitions of Peace; who accordingly went thither in the Months of *July* or *Auguſt* 1711. in a clandeſtine Manner, and did communicate the ſaid Propoſitions to the Miniſters of *France*; in which the particular Intereſts of *Britain*, and the common Intereſt of *Europe* were betray'd, and an expreſs Article inſerted in the ſaid Propoſitions, That the Secret ſhould be inviolably kept from the Allies: By which the ſaid Earl ſet on foot a Negociation of Peace more advantageous to *France* than She had ask'd the preceeding Month of *April*, and thereby put it in the Power of *France* to create Jealouſies between her Majeſty and her Allies, deſtroying that Confidence which had ſo long ſubſiſted between them. Vol. vi. p. 207.

II. And whereas the French King, laying hold of the ſaid treacherous Overture, did, in or about the Months of *Auguſt* or *September* 1711. ſend over Monſieur *Meſnager* into *England*, to carry on a clandeſtine and ſeparate Negociation of Peace; and the ſaid Earl did afterwards, in the ſaid Month of *September* 1711. ſecretly, and without Authority, treat with the ſaid *Meſnager* of a Peace between *Britain* and *France*, and in ſuch Negotiations did promote the making a ſeparate Treaty between the ſaid Crowns; which Treaty was afterwards, with the Privity of the ſaid Earl, ſign'd by the ſaid *Meſnager* on the Part of *France*, and by the Earl of *Dartmouth* and *Henry St. John* Eſq; two of her Majeſty's Secretaries of State, in behalf of her late Majeſty, by virtue only of her Sign-Manual under the Signet, and without the Knowledge of her Allies, in which Treaty the Intereſts of *Britain* were given up to *France*, and the Duke of *Anjou* admitted King of *Spain*; whereby the ſaid Earl did not only aſſume Regal Power, in treating with the Enemy without Authority from her Majeſty, but did what in him lay to ſubvert the antient Conſtitution, by introducing illegal Methods of tranſacting the moſt important Affairs of State, and by the ſaid ſeparate Treaty did what in him lay to diſſolve the many ſolemn Treaties her Majeſty ſtood engaged in to her Allies, whereby he brought her to this Dilemma, either to ſubmit

to

to the Dictates of *France*, or loſe the Confidence of her Allies.

III. And the ſaid Earl, the better to carry on the ſaid Treaty, did, with others then in high Truſt, contrive a Set of General Preliminaries to be ſign'd by the Sieur *Meſnager* only, and adviſed her Majeſty to communicate the ſame to the Miniſters of the Allies then in *England*, as the Ground of a General Peace, (while the Treaty ſign'd, as aforeſaid, by the Earl of *Dartmouth* and Mr. *St. John* on the Part of *England*, and by the ſaid *Meſnager* on the Part of *France*, was, by the Advice of the ſaid Earl of *Oxford*, and others, wilfully concealed, not only from the Allies, but even from her Majeſty's Council and Parliament;) and did alſo adviſe her Majeſty, not only to accept the ſaid Preliminaries, but to communicate them to the States, as a ſufficient Foundation to open the Conferences of Peace with *France:* And the better to cover his Deſigns from the States, caus'd certain Inſtructions to be ſigned by her Majeſty, and delivered to the Earl of *Straſford*, her Ambaſſador to the States, wherein he was directed to repreſent to the Penſionary of *Holland*, and other Miniſters of the States, that when her Majeſty, in *May* laſt, by his Excellency's Diſpatches, received an Account of the Senſe which thoſe among them, who were at that Time in the Secret, had of the Overtures made by *France*, for ſetting a Negotiation of Peace again on Foot, and of the Anſwer which it was deſir'd might be return'd to the Propoſitions, ſign'd by Monſieur *de Torcy*, ſhe immediately acquainted the Enemy, that their Offers were thought by her and the States-General neither particular, nor full enough, and therefore ſhe did inſiſt, that they ſhould form a diſtinct Project of ſuch a Peace as they were willing to conclude: Whereas no ſuch Inſtances had been made to the Enemy; but, on the contrary, notwithſtanding her Majeſty had declared that the Propoſitions of *Torcy* were neither particular, nor full enough, yet without any farther Explication from the Enemy, ſhe was prevailed on, in manner aforeſaid, to ſend over Propoſitions to *France* in all Reſpects as deſtructive to the Intereſts of *Britain* and her Allies, as thoſe of *Torcy*; and in the Particulars aboveſaid, as well as in ſeveral others, the ſaid Inſtructions contain'd Matters, either falſe, or groſly

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groſly prevaricating and evaſive; by which wicked Counſels of the ſaid Earl of *Oxford*, that unqueſtionable Truth, which, by the Laws of Nations, ought to accompany the Inſtructions of Ambaſſadors to Princes in Confederacy againſt the Common Enemy, was vilely proſtituted to deceive her Majeſty's Allies, in Matters of the greateſt Importance to their own Intereſts, and the Intereſts of theſe Kingdoms; the Honour of her Majeſty's Perſon, and the Crown of theſe Realms, were ſcandalouſly betray'd; and the Royal Hand, by the wicked Arts of the ſaid Earl, made the Inſtrument to advance the Intereſt of the Common Enemy.

IV. And whereas the Earl of *Strafford* had communicated the Preliminaries ſign'd by Monſieur *Meſnager* only to the States General, who were alarmed at the preſſing Inſtances made by her Majeſty, that Conferences ſhould be opened on Propoſitions as general as thoſe ſo lately offer'd by *France*, and ſign'd by *Torcy*; and their High Mightineſſes having been unſucceſsful in their Remonſtrances to the Earl of *Strafford*, againſt opening the Conferences, did ſend over Monſieur *Buys*, their Ambaſſador, to repreſent to her Majeſty, as well the Hazard of Meeting the Miniſters of *France*, before the Eſſential Articles were ſettled by ſpecial Preliminaries, or at leaſt explain'd by *France*, and made ſpecifick; as likewiſe the Advantages ariſing to the Enemy thereby; the ſaid Repreſentations were, by the evil Influence of the ſaid Earl and his Accomplices, render'd ineffectual. And, in order to prevail upon the States to open the Conferences upon the ſaid General Preliminaries, an Occaſion was taken, by the Contrivance of the ſaid Earl, of declaring before the ſaid *Buys*, her Majeſty's Affection and good Diſpoſition towards the States, and her Deſire to treat with them, with perfect Confidence and Harmony: And the ſaid Earl of *Oxford* did alſo declare, or cauſe to be declared in her Majeſty's Name, that ſhe had made no ſeparate Treaty with *France*, nor would make any before ſhe had comply'd with all Engagments to her Allies, and given them an Opportunity of making good their Pretenſions. By which falſe Aſſurances the ſaid Earl of *Oxford* did diſhonour her Majeſty, by whoſe Privity the ſaid ſeparate Treaty with *France* had been

ſign'd; the States, her Allies, were groſly abuſed, and induced thereby to enter into that fatal Negotiation with *France*.

V. That her Majeſty having conſtituted *John* Lord Biſhop of *Briſtol*, and the Earl of *Strafford*, her Plenipotentiaries, to treat with the Plenipotentiaries of the Allies, and thoſe of *France*, of a General Peace, agreeable to the reaſonable Demands of all Parties, he, the ſaid Earl of *Oxford*, not content with abuſing the Royal Authority, to the Deluſion of the States-General, but intending the univerſal Prejudice of his Imperial Majeſty, and the reſt of her Allies, and thereby the more ſucceſsfully to carry on the Meaſures of *France*, cauſed Inſtructions to be prepared for her Majeſty's ſaid Plenipotentiaries, to the Effect following, *viz.* That they ſhould inſiſt that the Security which the Allies expected, and the *French* King had promiſed, could not be obtained, if *Spain* and the *Weſt-Indies* be allotted to the Houſe of *Bourbon*; whereas the ſaid Earl had at that Time privately agreed with *France*, that *Spain* and the *Weſt Indies* ſhould remain to the Houſe of *Bourbon*, and prevailed with her Majeſty to be a Party to the ſaid private Treaty: And they were further inſtructed, that in caſe the Enemy ſhould object that the ſecond Article, ſign'd by *Meſnager*, imply'd, That *Spain* ſhould be allotted to the Duke of *Anjou*, they ſhould inſiſt that theſe Articles were binding only to *France*, and not to the Allies; whereby the ſaid Earl of *Oxford* entered into a Confederacy with the Enemy, and procured her Majeſty's Conſent thereto, to impoſe upon the Allies, and conceal the ſaid ſeparate Treaty that had been agreed on between *Britain* and *France*; and by theſe, and many other Particulars contained in the ſaid Inſtructions, had brought a laſting Reproach on this Crown, and groſly violated the Treaties her Majeſty was engaged in with her Allies, to act in Concert with them in all Treaties of Peace.

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VI. That the Conferences of Peace being opened upon the mutual and moſt ſolemn Engagements amongſt the Allies, not only to act in Confidence with each other, but to promote their Common Intereſt; and a ſpecifick Explanation of the General Preliminaries having been given by the Enemy at *Utrecht*, whereon the Allies delivered their reſpective

tive Demands; by the Artifices of *France*, and the ſecret Encouragment of the Miniſters of *Britain*, the Progreſs of the ſaid Negotiation was kept in Suſpence, under the Pretence of the Enemy's refuſing to give their Anſwer in Writing. During which Time the ſaid Earl again aſſuming to himſelf Regal Power to treat of Peace with *France*, which was then delegated to the Plenipotentiaries at *Utrecht*, contrary to the Laws of this Kingdom, in Violation of the Alliances her Majeſty ſtood engaged in, *&c.* was not only wanting in his Duty to her Majeſty, in not preventing any further private Negotiations with *France*, but did, with others his Accomplices, adviſe and promote a ſeparate Negotiation of Peace directly from *England* to *France*, without any Communication thereof to her Allies; and therein did concert with the Miniſters of the Enemy Terms of Peace prejudicial to the Intereſt of her Majeſty, and of all her Allies; whereby the good Effects of the ſaid General Negotiations were defeated.

VII. That her Majeſty having been prevail'd on by the ſaid Earl to accept of a Treaty with *France*, on the Suppoſition that *Spain* ſhould continue in the Poſſeſſion of the Houſe of *Bourbon*, he, the ſaid Earl, having nothing in View but the aggrandizing the Common Enemy, yet intending to cover his Iniquity under falſe Appearances, did wickedly carry on a private Negotiation with *France*, on the Subject of the Duke of *Anjou*'s Renunciation of his Right to the Kingdom of *France*; and that ſuch Renunciation ſhould be the Security againſt the Reunion of the two Kingdoms: And by his evil Counſels her Majeſty was prevailed on to conclude a Peace with *France*; although the ſaid Earl knew that a Memorial had, during the ſaid ſeparate Negotiation, been tranſmitted by Monſieur *de Torcy*, Miniſter to the *French* King, to one of her Majeſty's Secretaries of State, whereby it was declared, that the Renunciation would be invalid by the Laws of *France*. By which falſe Counſels the ſaid Earl abuſed the Influence which he had obtain'd with her Majeſty, ſo far as to engage her to become Party with *France* in ſo fatal a Deceit.

VIII. That her Majeſty having, on the 7th Day of *December*, 1711. recommended it from the Throne, that Proviſion might be made for an early Vol. vi. p. 118.

Campaign, to carry on the War with Vigour; and Supplies were granted accordingly; and her Majeſty having given Aſſurances to her Allies of her ſincere Intentions to carry on the War, and inſtructed the Duke of *Ormond* to renew the ſame, and to concert with the Allies the proper Meaſures for entering on Action; and the Confederate Army having marched, according to the Reſolution taken in Concert with her Majeſty's General, almoſt up to the Enemy with a great Superiority; ſo that in all Appearances, they would have been able to have gain'd great Advantages over the Enemy; he, the ſaid Earl, in order to diſappoint the Expectations of the Allies, and to give Succeſs to his ſecret Negotiations, did, together with other evil Counſellors, conſent that an Order ſhould be ſent, in her Majeſty's Name, to the Duke of *Ormond* in *Flanders*, to avoid engaging in any Siege, or hazarding a Battle till further Orders; and did likewiſe conſent that Orders ſhould be ſent to the Biſhop of *Briſtol*, one of her Majeſty's Plenipotentiaries at *Utrecht*, to declare to the *Dutch* Miniſters, that her Majeſty look'd on herſelf, from their Conduct, to be under no Obligation to them: Which Declarations giving Alarms to the Allies, and their High Mightineſſes finding that all Applications to the Miniſters of *Britain*, and in particular to the ſaid Earl, were of no Avail againſt *France*, thought it neceſſary to addreſs directly to her Majeſty, by a Letter of the 5th of *June*, 1712. therein expreſſing their Surprize at the two Declarations above mentioned; and not being able to conceive how ſuch a ſudden Change ſhould happen, they did beſeech her Majeſty, that ſhe would not perſiſt in the Declarations made by the Biſhop of *Briſtol*, and would be pleaſed to revoke the Orders given to the Duke of *Ormond*, and would authorize him to act as the Exigency of the War ſhould require: Notwithſtanding which, he, the ſaid Earl, did adviſe her Majeſty to diſregard their Repreſentations; whereby the Progreſs of the Arms of the Allies was ſtopped, and the moſt favourable Opportunity loſt for conquering the Enemy, the Confidence between her Majeſty and her Allies was deſtroy'd, the *French* King made Maſter of the Negotiations, and the Affairs of *Europe* given into his Hands.

IX. That

IX. That to impoſe upon the Allies, the Neceſſity of ſubmitting to the Terms of *France*, the ſaid Earl concerted with the Miniſters of *France* the ſeparating the Troops in her Majeſty's Pay from the reſt of the Confederate Army; and having Notice that the Generals of the Auxiliaries, paid by her Majeſty, did refuſe to withdraw with the Duke of *Ormond*, without Orders from their reſpective Maſters, he, the ſaid Earl, being then Lord High Treaſurer of *Great-Britain*, did arbitrarily take upon him to put a Stop to the Pay due on Account of the ſaid Foreign Troops, although they were entitled thereto by Act of Parliament. By which Separation great Numbers of the Confederate Troops, at the Action of *Denain*, fell as a Sacrifice to the Fury of *France*, the Siege of *Landrecy* was raiſed, the important Towns and Fortreſſes of *Queſnoy*, *Bouchain*, and *Douay*, were retaken by the *French*; and not only the Fortune of the War, but the Fate of *Europe* decided in favour of *France*. Vol. vi. p. 111.

X. That the ſaid Earl did carry on, with the Miniſters of *France*, a ſeparate Negotiation for a general Suſpenſion of Arms, by Sea and Land, between *Britain* and *France*; and did adviſe her Majeſty to ſend over *Henry* Viſcount *Bolingbroke*, one of her Secretaries of State, to the Court of *France*, to ſettle the ſaid Suſpenſion; which was concluded on the 19th of *Auguſt*, *N. S.* 1712. for four Months, without the Knowledge of her Confederates, and before any Terms of Peace were ſettled with the Enemy, whereby the Allies were depriv'd of the juſt Aſſiſtance to which they were entitled, and left expoſed to the inſults of the Enemy; the Ties of Friendſhip, between her Majeſty and her Allies, were cut aſunder; and the Safety of her Kingdoms, and of the Proteſtant Succeſſion, were left expos'd to the Enterprizes of her moſt formidably Enemy.

XI. That whereas the States were in Poſſeſſion of the Town and Fortreſs of *Tournay*, and the French King had, during the ſaid private Negotiation, ſignified his Conſent to the Miniſters of *Britain*, That the ſaid Town and Fortreſs ſhou'd remain to the ſaid States, as part of their Barrier; and her Majeſty had declared herſelf conformably thereto, in her Speech to both Houſes of Parliament, on the 6th of *June* 1712. he, the ſaid Earl, not conſider-

ing the Duty of his Allegiance, did, in or about the Months of *September*, or *October*, 1712. traiterouſly
Vol. vi. p. 112. aſſiſt and adhere to the French King, then an Enemy to her late Majeſty, and did adviſe the ſaid Enemy in what Manner the ſaid Town and Fortreſs of *Tournay* might be gain'd from the States to the French King, contrary to the Duty of his Allegiance and the Laws of this Realm.

XII. That whereas her late Majeſty had, at a vaſt Expence of Blood and Treaſure, and on the Advices of her Parliament, proſecuted a vigorous War againſt the Duke of *Anjou*, which in the Years 1710, 1711, and 1712, was carried on againſt the ſaid Duke and his Subjects, who then remain'd Enemies to her Majeſty, he, the ſaid Earl, did at ſeveral Times, in the ſaid Years, traiterouſly aſſiſt and adhere to the ſaid Duke of *Anjou*, and with other Evil-diſpoſed Perſons, did promote the yeilding up *Spain* and the *Weſt-Indies*, or ſome Part thereof, to the ſaid Duke of *Anjou*, then in Enmity with her Majeſty, againſt the Duty of his Allegiance and the Laws of this Realm.

XIII. That whereas her late Majeſty did, on the firſt opening the Conferences, declare to both Houſes, on the 7th of *December*, 1711. That ſhe wou'd endeavour, that after ſo long a War, the Nation might find their Intereſt in Trade improv'd by a Peace; and on the 6th of *June*, 1712. did declare, That the Terms of Peace obtain'd for her Subjects were ſuch, as ſhe had Reaſon to expect wou'd make them ſome Amends for the great Burden they lay under during the late War; and after the concluſion of the Peace, did declare, on the 9th of *April*, 1713. That the Advantages ſhe had obtain'd for her Subjects had occaſion'd great Delays in the Treaty; whereupon both Houſes did, from Time to Time, expreſs their Acknowledgments to her Majeſty, for her great Concern for the Welfare of her People; and whereas, at the ſetting on foot the ſaid ſeparate and pernicious Negotiation, between the Miniſters of *Great Britain* and *France*, it was laid down as a Principle on the Part of *Britain* never to be departed from, That *France* ſhould conſent to adjuſt the Intereſts of *Britain*, in the firſt Place, that the Miniſters of *Great-Britain* might be thereby enabled to engage the Queen to make the Concluſion of the general

general Peace eaſy to *France*; and on this pretence, it was inſiſted on, by the Miniſters of *Britain*, to remit the Diſcuſſion of the Intereſts of the Allies to general Conferences; and during the ſaid ſeparate Negociation, all imaginable Conceſſions were not only made by the Miniſters of *Britain*, for the Intereſts of *France* againſt the Allies, but all Meaſures were enter'd into between them, that even the Miniſters of *France* cou'd dictate, in order to ſtrengthen their Hands, and enable them to impoſe the Terms of a general Peace; he, the ſaid Earl, in Conſert with *France*, to the Deſtruction of his Country, and the ſacrificing the Commerce of *Britain*, did adviſe her Majeſty, that in the Propoſition ſent by Mr. *Prior* to *France*, and alſo in the ſaid ſeparate Treaty, ſign'd on the 27th of *September*, 1711. wherein the preliminary Demands for *Britain* more particularly were intended to be adjuſted with *France*, That the Demand for *Britain*, in Point of Commerce, ſhould not only be made in inſufficient Terms, but that the Liberty of Fiſhing, and drying of Fiſh on *Newfoundland*, ſhould be expreſsly given up to *France*; and did artfully contrive, with the Miniſters of *France*, to keep in Suſpence all Matters that concern'd the ſaid Commerce, until, by his ſaid wicked Counſels, *France* was become Maſter of the Negotiations; and the Miniſters of *France*, afterwards diſputing the moſt eſſential Articles which had been in Agitation, and in particular that Principle of Treating and being Treated as *Gens Amiciſſima*, and endeavouring to elude what had been agreed on in the ſaid private Negotiation, for the ſuppos'd Advantage of *Britain*; he, the ſaid Earl, under Pretence of removing a Difficulty then depending by an Expedient advantageous to *Britain*, did adviſe the 9th Article of the Treaty of Commerce with *France*; which was afterwards rejected by the Commons as prejudicial to the Commerce of theſe Kingdoms; but yet, for the ſake of gaining that deſtructive Article for *Britain*, he, the ſaid Earl, in Defiance of an Act of Parliament, and in Contempt of the earneſt Repreſentations of the Merchants, and of the Commiſſioners for Trade and Plantations, did adviſe her Majeſty finally to agree with *France*, that the Subjects of *France* ſhou'd have Liberty of Fiſhing and drying Fiſh on *Newfounland*;

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and did alſo adviſe her to make a Ceſſion to *France* of the Iſle of *Cape-Breton*, with Liberty to fortify the ſame, although her Majeſty had declared, That *France* had conſented to make an abſolute Ceſſion of *Nova Scotia*, or *Arcadia*, whereof *Cape-Breton* is Part; whereas the only Advantages in Trade, pretended to be ſtipulated for *Britain*, were to depend on certain Conditions to be made good by Act of Parliament. By means of which Conſels, the Intentions of her Majeſty, to have obtained Advantageous Terms of Commerce, were fruſtrated, the Trade and Manufactures of *Britain* render'd precarious, and that beneficial Branch of Trade, always eſteem'd the Support of the Naval Power, and the chief Nurſery of the Seamen of *Britain*, yeilded up to *France*; and the only Pretence for the Violation of Treaties, the adjuſting firſt the Intereſts of *Britain*, terminated at laſt in the Sacrifice of her Commerce to *France*, without the leaſt Shadow of Advantage in Trade procured for theſe Kingdoms.

XIV. That he, the ſaid Earl, did, with other evil Counſellors, even without any Application from the Duke of *Savoy*, and after the French King had, in the ſaid private Negotiations, conſented that the Kingdom of *Sicily* ſhould remain to the Houſe of *Auſtria*, form a Project to diſpoſe of the Kingdom of *Sicily* to the Duke of *Savoy*, from the Houſe of *Auſtria:* And a Treaty of Peace being afterwards made between the French King, his Royal Highneſs, and the Duke of *Anjou*, wherein a Ceſſion is made to his Royal Highneſs of the ſaid Kingdom, without any Concurrence of his Imperial Majeſty; he, the ſaid Earl, did baſely adviſe her Majeſty to aſſiſt his Royal Highneſs againſt the Emperor, then in Alliance with her, with a part of her Fleet, in order to put him in Poſſeſſion of *Sicily*; whereby the greateſt Injuſtice was done to his Imperial Majeſty, in direct Violation of the Grand Alliance, and contrary to her Majeſty's Declarations from the Throne, and her Inſtructions to her Plenepotentiaries; whereby National Faith, and the Honour of the Crown, was vilely betray'd, and the Naval Power of theſe Kingdoms employ'd againſt her faithful Allies.

Vol. vi. p. 114. XV. That whereas, by the ancient Laws of this Kingdom, it is incumbent on the great Officers of State, to maintain, as far as in them lies, the Sacredneſs

credneſs of the Royal Word, it being apparent, that the greateſt Diſhonour to the Throne, and the greateſt Danger to theſe Kingdoms muſt enſue, whenever that Fountain of Truth, by wicked Counſels, ſhall be corrupted, and thereby loſe its juſt Influence and Authority; And whereas, in making Peace and War, the Sovereigns of this Realm have in all Ages taken the Advice of Parliament, and her late Majeſty declar'd from the Throne her Intentions to communicate the Terms of Peace to her Parliament, he the ſaid Earl, then Lord High Treaſurer, having taken on himſelf, throughout the ſaid Negotiations, a moſt arbitrary Authority, and the Chief Direction of her Majeſty's Councils, wickedly deſigning to proſtitute the Honour of the Crown, and the Dignity of Parliaments, and not only totally to deprive her Majeſty of the Advice of her Parliament in ſo great a Conjuncture, but by miſrepreſenting the moſt eſſential Parts of the Negociations of Peace, to obtain the Sanction of Parliament to his traiterous Proceedings, and thereby to deceive her Majeſty, her Allies, her Parliament, and her People; he, the ſaid Earl, together with other evil Counſellors, did prepare ſeveral Speeches and Declarations to be made by her Majeſty to her Parliament on the Subject of Peace, and did adviſe her to make the ſame to her Parliament, and particularly, by Means of his falſe Counſels, ſhe did, on the 7th of *December*, 1711. declare from the Throne, *That notwithſtanding the Arts of thoſe who delighted in War, both Place and Time were appointed for opening the Treaty of a general Peace; That our Allies, eſpecially the States-General, whoſe Intereſt ſhe look'd upon as inſeparable from her own, had by their ready Concurrence expreſs'd their Confidence in her*; whereas, it was then notorious that the Allies of her Majeſty, and particularly the States-General, then had, in the moſt preſſing Manner, repreſented not only to her Majeſty's Miniſters in *Holland*, but afterwards by a Miniſter of their own directly to her, the Inſecurity to the common Cauſe, by entring into general Negociations with *France* on the Propoſitions ſign'd by Monſieur *Meſnager*, and alſo their Opinion of the Conſequences that might enſue thereon; and although they had great Apprehenſions concerning the Method of opening the

the Conferences, and the Conſequences that might happen thereupon; yet being wrought on by the Menaces us'd by her Majeſty's Miniſters, and relying on her ſolemn Declarations to ſupport the Intereſt of their State, and to act in perfect Confidence with them, they did at laſt, with Reluctance, conſent to enter upon a general Negociation of Peace with *France:* And, in the ſame Speech, her Majeſty was prevail'd on, by the evil Counſels of the ſaid Earl and others, to declare in the Words, or to the Effect following, *That the Princes and States, that have been engag'd with us in this War, being by Treaties entitled to have their ſeveral Intereſts ſecured at a Peace, I will not only do my Utmoſt to procure every one of them all reaſonable Satisfaction, but I ſhall unite with them in the ſtricteſt Engagements for continuing the Alliance, in order to render the general Peace ſecure and laſting*; and in her Meſſage, of the 17th of *January* following, ſhe again expreſſes the Care ſhe intended to take of all her Allies, and of the ſtrict Union in which ſhe propos'd to join with them; whereas, by the evil Influence of the ſaid Earl, her Majeſty was not only induced to enter into a private Negotiation with *France*, excluſive of her Allies, but the ſame was in like Manner carried on by him, the ſaid Earl, and others; and the Intereſts which the Allies were entitled to by their Treaties, eſpecially of his Imperial Majeſty, were, by the wicked Practices of him, the ſaid Earl, and others, given up to *France*, and no Engagements were obtain'd for continuing the Alliance, in order to render the general Peace ſecure. And her Majeſty having expreſs'd her Reſolutions never to make Peace with *France* and *Spain*, ſo long as *Spain* and the *Weſt-Indies* remain'd in the Houſe of *Bourbon*; ſhe was prevail'd upon, by the like Advice, to declare herſelf, in Anſwer to an Addreſs of the Houſe of Peers, the 11th of *December*, 1711. to the Effect following, *viz. I ſhou'd be ſorry any one cou'd think I wou'd not do my Utmoſt to recover* Spain *and the* Indies *from the Houſe of* Bourbon; whereas it is manifeſt, that the leaving the Kingdom of *Spain* and the *Indies* in the Houſe of *Bourbon*, was the Foundation of the ſeparate Treaty between *Britain* and *France*, which had been, before that Time, ſign'd even with her Ma-

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jeſty's

jeſty's Conſent. And her Majeſty having frequently declar'd, That her Reſolutions, in entring into the ſaid Negociations, were to obtain a good and laſting Peace, and the Plenipotentiaries at *Utrecht* being inſtructed to treat with *France* to that End, he, the ſaid Earl, in order to remove the Suſpicions which had been conceived of his private Negotiations with *France*, did adviſe her Majeſty to make this further Declaration in her ſaid Meſſage of the 17th of *January*; *That the World will now ſee how groundleſs thoſe Reports are, which have been ſpread abroad by Men of evil Intentions, to ſerve the worſt Deſigns; as if a ſeparate Peace had been treated, for which there has not been the leaſt Colour given*; whereas a ſeparate Negociation had been carried on for five Months together between *Britain* and *France*; and during that Time private Propoſitions had been ſent from *England*, and a private Treaty with a Miniſter of *France* ſign'd even by her Majeſty's Privity, excluſive of all the Allies, before the ſaid Declaration was made; and private Meaſures were thenceforth carried on by the ſaid Earl and his Accomplices, on behalf of her Majeſty, with the Miniſters of *France*, even to the Concluſion of the Peace. Her Majeſty was further prevail'd on, by the wicked Advice of the ſaid Earl, in her Speech of *June* the 6th, 1712. to declare, *That to prevent the Union of the two Crowns, ſhe wou'd not be content with what was Speculative, but inſiſt upon ſomething Solid*; and in the ſame Speech, to the Effect following, *The Nature of the Propoſal for a Renunciation is ſuch, that it executes itſelf, and* France *and* Spain *are thereby more effectually divided than ever*; whereas the Miniſters of *France* had before that Time aſſur'd the Miniſters of her Majeſty, That to accept of the Expedient propos'd on her behalf, wou'd be to build on a Sandy Foundation; and that the Renunciation wou'd be void by the Laws of *France*; and that they wou'd deceive themſelves, who accepted it as an Expedient to prevent the Union of the two Crowns; and not only in the Particulars before mentioned, but in many others contain'd in the ſaid Speeches and Meſſages, the moſt eſſential Points relating to Peace and Commerce, and which concern'd the Intereſt, as well of the Allies, as of *Britain*, were miſrepreſented.

By

By all which wicked evil Counſels, he, the ſaid Earl, did ſcandalouſly abuſe the Favour of his Royal Miſtreſs, and, by means of her Authority, did miſlead her Parliament into groundleſs Reſolutions; and thereby obtain'd the Approbation of Parliament to his dangerous Practices, and expos'd her and her People to the Contempt of the Common Enemy.

XVI. That whereas the ſaid Earl having on all Occaſions uſed his utmoſt Endeavours to ſubvert the antient Conſtitution of Parliaments; and being wickedly determined, at one Blow, to deſtroy the Freedom of the Houſe of Lords; and intending to diſguiſe his miſchievous Purpoſes under a pretended Zeal for the Prerogative of the Crown, did, on or about the Months of *December*, or *January*, 1711. whilſt the Houſe of Lords were under an Adjournment, and had reaſon to expect, that on their next Meeting Matters of the higheſt Importance would be communicated to them from the Throne, they having a few Days before given their Opinion to her Majeſty, *That no Peace could be ſafe or honourable to* Britain or Europe, *if* Spain *and the* Weſt-Indies *were to be allotted to any Branch of the Houſe of* Bourbon, contrary to his Duty and Oath, and in Violation of the Truſt repoſed in him, and with a Purpoſe to render ineffectual the Repreſentations of her Majeſty's Allies againſt the ſaid Negotiations of Peace, as well as to prevent the good Effects of the Advice of the Houſe of Lords; and in order to obtain ſuch further Reſolutions of that Houſe on the Subject of Peace, as might promote his ſecret Proceedings, did adviſe her Majeſty to create twelve Peers of this Realm, and Lords of Parliament; and did alſo adviſe her Majeſty to call them to Parliament; and they took their Seats in the Houſe of Lords, on or about the 2d of *January*, 1711. to which Day the Houſe then ſtood adjourn'd; whereby the ſaid Earl did highly abuſe the Influence he then had with her Majeſty, and prevail'd on her to exerciſe, in the moſt dangerous Manner, that undoubted Prerogative which the Laws of this Kingdom hath entruſted with the Crown for rewarding diſtinguiſh'd Merit; by which deſperate Advice he did wickedly pervert the true End of that Prerogative, to the Diſhonour of the Crown, and the ſubverting the Conſtitution of Parliaments: All which Crimes were committed by

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by

by the ſaid Earl againſt our late Sovereign Lady the Queen, the Peace of this Kingdom, and in Breach of the Truſts repoſed in him, he being then Lord High Treaſurer, and one of her Majeſty's Privy Council: For which Matters and Things, the Knights, Citizens, and Burgeſſes in Parliament Aſſembled, do, in the Name of themſelves, and of all the Commons of *Great Britain*, impeach the ſaid Earl of High Treaſon, and other High Crimes and Miſdemeanours, in the ſaid Articles contain'd. And the ſaid Commons ſaving to themſelves the Liberty of exhibiting any other Accuſations or Impeachments againſt the ſaid Earl, and alſo of replying to the Anſwers which the ſaid Earl ſhall make, do pray that he may be put to anſwer all and every the Premiſſes; and that ſuch Proceedings may be upon them, and every of them, had, as ſhall be agreeable to Law and Juſtice.

Additional Articles of High Crimes and Miſdemeanors, againſt the ſaid Earl.

Further Articles of Impeachment.

I. THAT whereas, about the Month of *January*, $17\frac{10}{11}$. a deſtructive Expedition was ſet on Foot, under Pretence of conquering the Poſſeſſions of the *French* King in *North America*; but with a real Deſign to promote his Intereſts, by weakening the Armies of the Allies in *Flanders*, and diſſipating the Naval Forces of this Kingdom, as well as for the ſake of the private Gain, and corrupt Intereſts of the Promoters of it; he, the ſaid Earl was not only wanting in his Duty, by induſtriouſly abſenting himſelf from the Meeting, where that Expedition was concerted, and by not adviſing her Majeſty againſt it, but did adviſe her Majeſty to conſent to an Expedition for the conquering *Canada*, and the City of *Quebeck*, on the River of *St. Lawrence* in *North America*; and did adviſe her Majeſty to detach ſeveral Battalions then in the Service of her Majeſty and her Allies in *Flanders*, and ſend the ſame with a large Squadron of Men of War on that Enterprize, tho' he knew the ſame had been a little before debated in Council, and laid aſide as dangerous and impracticable: And a Demand being made at the Treaſury in *May*, or *June*, 1711. for 28000 *l.* on Pretence of Arms and Merchandize, ſaid to be ſent on the ſaid Expe-

Expedition, he, the ſaid Earl, though he knew it to be an unjuſt and exorbitant Demand, did adviſe the paying of the ſaid Sum, and counterſign'd a Warrant for the Payment of the ſame; purſuant to which, the ſame was iſſued and received. And after the ſaid Expedition had proved unſucceſsful, and he had diſcovered that the Nation had been cheated of above 20000 *l.* on that Account, did employ his
Vol. vi. p. 117. wicked Arts, and the Credit he had gain'd by his falſe and crafty Inſinuations and Practices, to keep the Houſe of Commons from examining that Affair; of which he had boaſted in a Letter to her late Majeſty, thereby vainly, but moſt wickedly recommending himſelf to the Continuance of her Majeſty's Favour, by the Succeſs of thoſe profligate Meaſures: By all which Practices, the Allies were deprived of the Aid of her Majeſty's Troops, to the apparent Advantage of the Common Enemy, the publick Money appropriated by Parliament was miſapply'd, and a heavy Debt incurred on the Nation.

II. That the ſaid Earl, not content with the Profit of the great Places he enjoy'd, about the Month of *October*, 1711. when the Nation was engaged in an expenſive War, exhauſted by Taxes, and under ſuch a Load of Debts, as it was almoſt impoſſible to ſatisfy, he did adviſe her Majeſty to ſign a Warrant to himſelf, then Lord Treaſurer, for the Payment of 13,000 *l.* to *John Drummond* Eſq; for ſuch ſpecial Services relating to the War, as her Majeſty had directed; and, about the 24th of *November* following, did ſign a Warrant for the Payment of 13,000 *l.* for ſuch ſpecial Services of the War as her Majeſty had directed, although no ſuch ſpecial Services were directed by her Majeſty, to which the ſaid Moneys were to be apply'd; but the ſaid Moneys were diſpoſed of to his own private Uſe and Advantage: And, about the 14th of *December*, 1713. to cover his ſaid ſcandalous Embezzlement, did prevail on her Majeſty to ſign a Warrant, in which his own great Services were recited; and declaring that her Majeſty, in Conſideration thereof, had determined to beſtow
Vol. vi. p. 118. on him the ſaid Sum of Money; and, accordingly, the ſaid *John Drummond* was directed to aſſign the whole Right and Benefit thereof to the ſaid Earl, although he had clandeſtinely procured from the ſaid

Drummond an Aſſignment of the ſaid Moneys, near two Years before the ſaid Warrant, and fraudulently converted it to his own Uſe.

III. That the ſaid Earl, about the Months of *July* or *Auguſt*, 1712. ſent *Matthew Prior*, his Inſtrument, or Creature, into *France*, for carrying on his ſeperate Negotiations; and, in the Month of *November* following, did prevail with her Majeſty to make him her Plenipotentiary to that Court; and did corruptly and ſcandalouſly combine with the ſaid *Matthew Prior* to defraud her Majeſty of great Sums of Money, under Colour of the ſaid Employment; giving the ſaid *Prior* an unlimited Credit to draw upon him the ſaid Earl, who was then Lord Treaſurer, during his Reſidence in *France*; and that the ſaid *Matthew Prior*, between the 27th of *Auguſt*, 1712. and the 10th of *July*, 1714. did, at ſeveral Times, draw Bills of Exchange to the Amount of 12,360 *l.* which the ſaid Earl did prevail with her Majeſty to ſign Warrants for the Payment of; and did counterſign the ſame, although the ſame exceeded the Allowance of an Ambaſſador of *Great Britain*. And that the ſaid Earl, in the Years 1712, 1713, and 1714. did prevail with her Majeſty to ſign Warrants, that were counterſign'd by him, for the Payment of 5560 *l.* to the Uſe of *Thomas Harley* Eſq; a near Relation and Emiſſary of the ſaid Earl's. And did illegally and corruptly iſſue divers other Sums out of her Majeſty's Treaſury to other Perſons; by which he had introduced a Practice highly prejudicial to the Conſtituion.

IV. And whereas the Revenues of the Crown, ariſing from the hereditary Exciſe, and Poſt-Office, were, by Letters Pattents of the late King *James* II. charged with certain Annuities, or yearly Sums, for the Uſe of *Mary*, the Conſort of the ſaid King *James*; but the ſaid Revenues were afterwards, by ſeveral Acts of Parliament, ſettled for the Support of the Royal Houſhold, or other Publick Uſes; and whereas by an Act of 12 *Anne*, 500,000 *l.* was granted to her ſaid late Majeſty, and appropriated to the Payment of her Debts; and whereas by an Act of 13 *Will.* III. it was made High Treaſon to correſpond with the Pretender, or remit any Money for his Uſe, he, the ſaid Earl, having by means of the ſaid *Matthew Prior*, held a Correſpondence with

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the

the ſaid *Mary*, Conſort to the late King *James*, and being determined ſecretly to promote the Intereſt of the Pretender; and the ſaid Conſort having empowered the Abbot *Gualtier* (a Popiſh Prieſt and Emiſſary, employ'd between the late Miniſters and *France*, in tranſacting the moſt ſecret Affairs relating to the Pretender) to concert with the ſaid Earl the ſettling the Payment and Remittance of a very great yearly Sum, out of her Majeſty's Treaſure into *France*, under Pretence of the ſaid Letters Patents; and the ſaid Earl, having held frequent Conferences with the ſaid Abbot *Gualtier* on the Subject aforeſaid, and by his evil Counſels ſacrificed to *France* the Common Intereſts of *Europe*, and reſolv'd, that the firſt Fruits of the Peace with *France* ſhou'd be an Offering by his Procurement to the moſt avow'd Adherent of the Pretender; did, ſoon after the Concluſion of the Peace, undertake to procure the Payment of the yearly Sum of 47,000*l.* and upwards, to the uſe of the ſaid Conſort, during her Life; and did, on or about the 23d of *December*, 1713. adviſe her Majeſty to ſign a Warrant to himſelf (reciting the ſaid Grant of the late King *James*) for Payment thereof. And did afterwards, on the 24th of *December*, ſign a Warrant to the Auditor of the Receipt of the *Exchequer*, requiring him to paſs Debentures for paying one Quarter of the ſaid Annuity, *viz.* from *Lady-Day*, 1713. to *Midſummer* following, appointing the ſame to be paid out of the ſaid Sum of 500,000*l.* appropriated to the Payment of her Majeſty's Debts; and the ſaid Earl, then Lord Treaſurer, did alſo adviſe her Majeſty to ſign another Warrant, directing the Payment of 1000*l.* to *Daniel Arthur* Eſq; for Moneys expended by him for her Majeſty's ſpecial Service; and the ſame being received by the ſaid *Arthur*, out of her Majeſty's Treaſure, the ſaid Earl, then Lord Treaſurer, did give private Directions to the ſaid *Arthur* to pay the ſaid Sum of 1000*l.* to the ſaid *Gualtier*, or to his Uſe; and it was paid to the Abbot *Gualtier* accordingly.

V. That whereas by the Laws of this Kingdom, no Subject of this Realm having committed High Treaſon, ought to be received as a publick Miniſter here from any foreign Prince; and whereas in the

the Year 1713. one *Patrick Lileſh*, uſually known by the Name of Sir *Patrick Lawleſs*, an *Iriſh* Papiſt, who had ſerv'd in Arms againſt King *William* and her late Majeſty, did come into this Kingdom, and take upon him the Character of a Miniſter ſent from *Philip* King of *Spain* to her late Majeſty; the ſaid Earl, who then aſſum'd to himſelf the ſupreme Direction of her Majeſty's Councils, was not only wanting in his Duty, in not adviſing her Majeſty againſt receiving the ſaid *Lawleſs* in the Quality aforeſaid, but did, together with other evil Counſellors, adviſe her to admit him as a Miniſter from his ſaid Catholick Majeſty; and the ſaid Earl did often meet and negotiate the moſt important Affairs of the Nation with the ſaid *Lawleſs*; and, the better to diſguiſe and conceal his dangerous Meaſures, did adviſe that the ſaid *Lawleſs* ſhould be introduc'd to her Majeſty under the falſe Name of *Don Carlo Moro*; and the Houſe of Lords having Notice, in *April* 1714. of the ſaid dangerous Attempt of the ſaid *Lawleſs*, did addreſs her Majeſty to iſſue her Proclamation, commanding all Magiſtrates to ſearch for Popiſh Prieſts, and put the Laws in Execution againſt them, as likewiſe to apprehend all ſuch Perſons as had born Arms againſt King *William*, or her late Majeſty; and a Proclamation was iſſued accordingly; and the Houſe of Lords reſolved, *That no Perſon being a natural-born Subject, who had ſerv'd againſt her Majeſty, ought to be received as a publick Miniſter*; yet the ſaid Earl, not regarding the Safety of her Majeſty, or the Proteſtant Succeſſion, or the Reſolution of the Lords, *&c.* inſtead of cauſing the ſaid *Lawleſs* to be apprehended, did, about the 15th of *March*, 1714. adviſe her Majeſty to ſign a Warrant, directing the Payment of 1000*l.* to *Daniel Arthur* Eſq; for ſpecial Services; and the ſaid Earl afterwards directed *Arthur* to pay it to the ſaid *Lawleſs*; who received it accordingly; and the ſaid Earl did, at other Times, in a fictitious and ſcandalous Manner, direct the Payment of other conſiderable Sums to the ſaid *Patrick Lawleſs* out of her Majeſty's Treaſure: And by thus countenancing the ſecret Emiſſaries of the Pretender, did greatly encourage his open Adherents to the apparent Danger of the Proteſtant Succeſſion.

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VI. That whereas her Majeſty Queen *Anne* did ſend *Milford Crow* Eſq; to invite the People of *Catalonia* into the Intereſt of King *Charles* III. the preſent Emperor, and to join with her Majeſty and her Allies againſt the common Enemy, and was pleaſed to authorize the ſaid Miniſter to give them her utmoſt Aſſurances to procure the Eſtabliſhment of all their Rights and Immunities, upon Condition they ſhould receive the ſaid King *Charles* as King of *Spain*, and utterly renounce the Houſe of *Bourbon*; and in her Majeſty's Inſtructions to the Earl of *Peterborough* and Sir *Cloudſly Shovel*, in *May* 1705. they were ordered to aſſure the *Catalans* of her Majeſty's Support, and to promiſe them in the Queen's Name, that ſhe wou'd ſecure them a Confirmation of their Rights and Privileges, that they might be ſettled on a laſting Foundation to them and their Poſterity, threatning Deſtruction to their Country, if they refus'd to come into her Meaſures; and a *Manifeſto* was publiſhed by the Earl of *Peterborough* in *Catalonia* to that Effect, by the Advice of the Earl of *Oxford*, who was then Secretary of State: And whereas the Nobility, Clergy, and whole Province of *Catalonia*, and the Inhabitants of the Iſland of *Majorca* relying on the Faith of thoſe Royal Aſſurances, did utterly abandon the Houſe of *Bourbon*, and acknowledge *Charles* III. for their Sovereign, and did join their Arms with thoſe of her Majeſty and her Allies, againſt the Duke of *Anjou*, and in a ſhort Time afterwards the Principality of *Catalonia* was delivered from the *French* Yoke, and great Supplies having been granted by Parliament for reducing the whole Kingdom of *Spain* to the Obedience of the Houſe of *Auſtria*, the Allies were attended with ſuch vaſt Succeſs, that they twice entered the Capital City of that Kingdom; to which the brave *Catalans* did not a little contribute: But the ſaid *Robert* Earl of *Oxford* having enter'd into a Conſpiracy, for ſubjecting the whole *Spaniſh* Monarchy to the Houſe of *Bourbon*, and malicioufly deſigning the utter Ruin and Deſtruction of the antient Rights, Liberties, and Privileges of the *Catalans*, who had made ſo glorious a Stand for the Preſervation of them, did, with other evil Counſellors, form a Deſign not only for abandoning the *Cata-*

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lans to the Fury of the Duke of *Anjou* and his Adherents, but for the final Extirpation of all their Rights and Liberties; and in Execution of that his Intention, during the private and pernicious Negotiations of Peace which were carried on between him and the Miniſters of *France*, and before any Negotiation was ſet on Foot, in Form of Law, between *Great Britain* and *Spain*, did adviſe her Majeſty to give Directions to the Lord *Lexington* to acknowledge the Duke of *Anjou* King of *Spain*; but was greatly wanting in his Duty, in not adviſing her Majeſty to give Inſtructions to her ſaid Miniſter peremptorily to inſiſt on ſecuring the *Catalans* their Liberties at the Concluſion of the Peace, but did maliciouſly and treacherouſly adviſe her Majeſty to conclude a Peace with the King of *Spain* without any Security for the antient Rights, Liberties, and Privileges of that brave, but unhappy Nation; and did adviſe her Majeſty, to ſend Admiral *Wiſhart* with a ſtrong Squadron of Men of War into the *Mediterranean*, to favour the Duke of *Anjou*'s Reduction of *Barcelona*, and the Iſland of *Majorca*; by which her Majeſty, contrary to her pious Intentions, the Faith of Nations, and Humanity itſelf, and contrary to her ſolemn and repeated Aſſurances, was prevailed on to abandon a diſtreſſed People, drawn in and engag'd by her own Invitation into an open War with the Duke of *Anjou*, for the Preſervation of the Liberties of *Europe*, and the Commerce of *Great Britain*, giving them up a Sacrifice to the implacable Reſentment of their enrag'd and powerful Enemy.

For which the Commons do further impeach the ſaid *Robert*, Earl of *Oxford* and *Mortimer*, of further High Crimes and Miſdemeanors, in the ſaid Articles contain'd, praying, that he may be put to anſwer, *&c.*

L. H. Steward. Read the Anſwer to the Impeachment.

[*The Clerk reads the Anſwer.*]

The Anſwer, of Robert *Earl of* Oxford *and* Mortimer, *to the Articles exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in Maintenance of their Impeachment againſt him for High Treaſon, and other High Crimes and Miſdemeanors, ſuppoſed to have been by him committed.*

The Earl's Anſwer to the Articles of Impeachment. Vol. vi. p. 123.

THE ſaid Earl, ſaving to himſelf all Advantages of Exception to the ſaid Articles, &c. for Anſwer thereto ſaith, He admits, that many Treaties and Alliances have been enter'd into between the Crown of *England* and other Powers, for their mutual Security, and to prevent the immoderate Growth of the Power of *France*; and therefore it was laid down as a fundamental Maxim among the Allies, that *France* and *Spain* ſhould never be united under one Head, but that the Prevention of the Union of *Spain* and the Empire, was equally the Deſign of the Alliance: Nor could the Continuance of *Spain* in the Houſe of *Bourbon* be prejudicial to the Allies, if the Union of that Crown with *France* could be prevented. As new Dangers of that Union were apprehended, new Treaties were enter'd into to obviate them: The Treaty of Partition was concluded upon that View; and he preſumes, the Parliament did not condemn it, becauſe Part of the Dominions of *Spain* were thereby allotted to the Houſe of *Bourbon*, but becauſe ſuch conſiderable Parts of thoſe Dominions, *viz. Naples*, *Sicily*, and the Province of *Guipaſcoa*, were allotted to that Branch of the Houſe of *Bourbon*, as was to inherit the Crown of *France*, which might have been a dangerous Addition to the then formidable Strength of that Crown; and becauſe it was made againſt the repeated Remonſtrances of *Charles* II. King of *Spain*, who declar'd, *That ſuch Partition Treaty could have no other Effect, than to force* Spain *to throw itſelf into the Arms of* France, *to prevent the diſmembring of the* Spaniſh *Monarchy*. And King *Charles* II. thereupon actually bequeathed the entire Monarchy of *Spain* to the Duke of *Anjou*, who on his Death took Poſſeſſion of it. That his Acceſſion, however, did not produce the Alliance in the Article mentioned between the late Emperor *Leopold*, King *William*, and the States

States General; for both King *William* and the States acknowledg'd the Duke of *Anjou* as King of *Spain*, allowing thereby, that his Enjoyment of that Kingdom, while he was a younger Branch of the Houſe of *Bourbon*, was not deſtructive of the Liberties of *Europe*, or the Ballance of Power. Afterwards, when the *French* King had ſeiz'd the *Spaniſh Netherlands*, King *William* came into the Aſſiſtance of the States, as an Auxiliary only, by ſending them the 10000 Men which *England* was oblig'd by Treaties to furniſh. After which ſeveral Conferences were held at the *Hague*, between the Miniſters of *England*, *France*, and the States, to find out ſome Expedient to prevent a War: At which Conferences the States often aſſerted, *That though they had acknowledg'd* Philip *King of* Spain, *yet ſuch Acknowledgment was not contrary to the Demand of a reaſonable Satisfaction to be given to the Emperor, for his Pretenſions to the* Spaniſh *Succeſſion*; which was in Effect to declare, *That the Satisfaction demanded for the Emperor, was ſuch as would leave King* Philip *in Poſſeſſion of* Spain. But theſe Conferences breaking off in *Auguſt*, 1701. in *September* following King *William* enter'd into the grand Alliance with the Emperor and the States General, whereby it was agreed, That Endeavours ſhould be us'd by amicable Means, in the firſt Place, to obtain the Satisfaction deſir'd for the Emperor, who at that Time would probably have accepted a very eaſy Compoſition for his Pretenſions. But the *French* King ſoon after acknowledging the Pretender, King *William* and the Parliament of *England* being provok'd thereby, reſolv'd to enter into the War, which had been begun by the Emperor alone in *Italy* the Year before. And the late Queen, in her Declaration of War, publiſh'd in *May* 1702. makes this Indignity the chief Motive of her engaging in it. The Earl admits the ſeveral Treaties mention'd in the Preamble of the Articles, the Advice of Parliament, and the Speeches from the Throne; but obſerves, That the avow'd Ends of the Grand Alliance in 1701. were the procuring a reaſonable Satisfaction to the Emperor for his Pretenſions to the *Spaniſh* Succeſſion, the Security of the Dominions of *Great-Britain* and the States, with the Navigation and Commerce of their Subjects, and the Prevention of the Union of *France* and

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Spain under the ſame Head; and the Territories pointed out in the fifth Article, were the furtheſt Views of that Alliance: No mention was made of the Recovery of the whole Monarchy of *Spain* to the Houſe of *Auſtria*, either in the grand Alliance, or the defenſive Alliance made the ſame Year between King *William* and the States.

And when in the Alliance between the Emperor, *Britain*, the *States-General*, and *Portugal*, in the Year 1703. it was concerted to ſet the Archduke *Charles* upon the Throne of *Spain*, he was then but a younger Branch of the Houſe of *Auſtria*, did not lay any Obligation on the Allies to procure that Monarchy for him, when he was elected Emperor; ſince the Imperial and Hereditary Dominions, join'd to the whole *Spaniſh* Monarchy, would have given ſuch an Exceſs of Power to one Prince, as would have deſtroy'd that Ballance of Power which her Majeſty and the reſt of her Allies had, in all their Treaties, laboured to preſerve: And it is a known Rule, in reference to Leagues between Princes, that if there happens a material Change in what was the principal Ground of the Treaty, the Obligation thereof ceaſes. That the Advice of Parliament always was of great Weight with her Majeſty, and the Earl always pay'd a juſt Regard to it; and he doubts not but the Peers had proper Inducements, when they gave their Advice to the Throne, *That no Peace could be ſafe, honourable, or laſting, ſo long as* Spain *and the* Weſt-Indies *continued in the Poſſeſſion of any Branch of the Houſe of* Bourbon: But that, when her Majeſty communicated to her Parliament the Terms on which a Peace might be made, the 6th of *June*, 1712. wherein *Spain* and the *Weſt Indies* were allotted to the Duke of *Anjou*, both Houſes of Parliament, by their reſpective Addreſſes to her Majeſty in the ſame Month, expreſſed their entire Satisfaction; both Houſes of Parliament alſo ſeverally congratulated her Majeſty on the Peace, and join'd in an Addreſs on the 22d of *April*, 1714. expreſſing their *juſt Senſe of her Majeſty's Goodneſs to her People, in delivering them by a ſafe, honourable, and advantageous Peace with* France *and* Spain, *from the heavy Burthen of a conſuming Land War, unequally carried on, and become at laſt impracticable.* The Earl acknowledges, that about *Auguſt*, 1710. her

her Majeſty was pleaſed to readmit him to a Place in her Council, and require his Service in Offices of Truſt; to which he ſubmitted with great Reluctance, from the Proſpect of the Difficulties with which he was likely to ſtruggle: But as he never asked any Employment, or uſed any wicked Arts to obtain the ſame, ſo he ſincerely endeavoured to diſcharge his Duty with the utmoſt Integrity, endeavouring to promote the Honour and Service of her Majeſty, whoſe Aim he knew to be the Welfare of her Kingdoms in the firſt Place, and, as far as ſhe judged it conſiſtent with that, the Common Good of her Allies. That in *September*, 1710. her Majeſty, whoſe undoubted Prerogative it was, thought fit to diſſolve the Parliament, and call a new one. In 1711. Propoſitions were made by *France* to her Majeſty for a Peace, without the Contrivance or previous Knowledge of the ſaid Earl. Her Majeſty expreſſed her Concern at the Diſappointment of former Negotiations, and her earneſt Deſire to put a ſpeedy End to the War, and the Effuſion of Chriſtian Blood, and to eaſe her Subjects from the heavy Burthen of their Taxes. The ſaid Earl acknowledges he did think a Peace was very much for the Intereſt and Advantage of *Great Britain*; and that the moſt favourable Juncture for obtaining advantagious Terms of Peace, was immediately after the ſignal Victories gain'd in 1706. For after the Reduction of the Dominions of the Electors of *Bavaria* and *Cologn*, with other important Conqueſts in *Germany*; after the Deſtruction of three great Armies of *France* in *Flanders*, *Spain*, and *Piedmont*; after the Recovery of the *Spaniſh Netherlands*, *Milan*, and other Territories in *Italy*, it might have been hoped, from the great Diſtreſs the Enemy was reduced to, a juſt and reaſonable Peace would have been obtained, ſince ſo much had been gained from the Enemy, and ſo much more, in all Probability, would have been yielded by them, as would have fully anſwered the Ends of the Grand Alliance. Peace was at that Time ſought by the Enemy; and the Earl, who was then one of the principal Secretaries of State, owns he then adviſed the Accepting of it: For the War had been continued on ſo unequal a Foot, that the Burthen of it annually increaſed, and, at the Time when theſe Propoſals were made by *France*, was become almoſt in-

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ſupportable. The Houſe of Commons were informed by one of the late King *William*'s Secretaries of State, indeed, that the Proportion of Forces had been ſettled between *England* and *Holland*, (*viz.*) *That* England *was to furniſh two Parts of Five by Land, and the States the other Three*; *and* England *was to furniſh five Parts of Eight by Sea, and the States the other Three:* But the States denying afterwards that they were under any ſuch Obligation, occaſioned *England*'s bearing an unequal Part in the War. The States inſiſted they ought not to be preſſed beyond their Ability, and made themſelves the ſole Judges of what they were able to do. In the mean Time the Charge of the War was greatly increaſed on the Subjects of *Britain*. In 1702. it was under four Millions; from that Time it gradually increaſed till the Year 1706. when it amounted to five Millions and a Half; and ſtill increaſing till 1711. it was advanced to near ſeven Millions, beſides vaſt Debts the Nation was involved in, the very Intereſt of which amounted to three Millions: And the Revenues of *Britain* were under ſuch Anticipations, that it was found difficult to raiſe two Millions and a Half for the growing Service, to be paid within the Compaſs of the Year; ſo that when the Duties and Difficulties upon Trade, and the Continuance of the Taxes upon Land, which had lain ſo heavy upon Land for twenty Years, were conſidered, the Earl believes it could not be thought for the Publick Intereſt to prolong the War without an abſolute Neceſſity. At the ſame Time the States had managed with ſo much good Husbandry, that he could not learn they had laid one additional Duty upon Trade, from the Year 1702, to 1711. Acquiſitions made on the Continent by the Expence of ſo much *Britiſh* Blood and Treaſure, were enjoy'd by the *Dutch*, and the other Allies; and the *Dutch* had this further Advantage of *Britain*, that they all the while carried on a Trade with *France*, from which the *Britiſh* Merchants were excluded. That though the Princes of the Empire were obliged by Treaty to furniſh certain *Quota*'s of Troops, they uſed to alledge for their Neglect, *That thoſe Troops which they were obliged to furniſh at their own Expence, were in the Pay of* Great Britain. The Queen alone furniſhed the Emperor's *Quota* in *Portugal*. The King of

The neceſſity of making Peace, from the Allies refuſing to furniſh their Quota's towards the War.

of *Portugal* neglected to find his Proportion of twelve thouſand Foot, and three thouſand Horſe; which he was obliged by Treaty to do at his own Expence, and even refuſed to permit the eleven thouſand Foot, and two thouſand Horſe, for which he had a Subſidy from the Queen, to be paid by Muſters; and when he was preſs'd to furniſh his full Number of Troops, alledged he could not for Want of the Subſidies the States ought to have paid him: And the States ſending few or no Troops to *Spain*, after the Battle of *Almanza*, and all the other Allies withdrawing their Proportions, almoſt the whole Charge of that War was born by *Britain*. And though it pleaſed God to bleſs the Queen's Arms with wonderful Succeſs, yet it did not appear, that after the Year 1706. our Succeſſes in other Parts countervail'd our Loſſes in *Spain:* For after the Loſs of two great Battles there, after being twice obliged to retire from *Madrid*, and after the taking the *Britiſh* Troops at *Brilinega*, the Recovery of *Spain* ſeem'd deſperate, eſpecially when ſome of the Allies made preſſing Inſtances for recalling part of their Troops, as they had frequently done during the War. From all which it appear'd how juſt the Grounds were, on which both Houſes of Parliament repreſented, *That the War had been unequally carried on, and at laſt become impracticable.* And the Earl cou'd not be thought to have deſign'd any Diſſervice to his Country, if in ſuch a Situation of Affairs he did not diſſuade the Queen from hearkning to Overtures of Peace. The ſaid Earl believes, That in all the Negotiations, the Allies had ſuch a Knowledge of all Meaſures taken by her Majeſty, as the Treaties with them requir'd: That the Propoſitions made by *France* in *April*, 1711. were immediately communicated to the Miniſters of *Holland*; and the Queen then aſſur'd them of her Reſolution to act in Concert with them in making Peace and War: That the States having expreſs'd their Inclination to Peace, and deſir'd that *France* might explain herſelf on the Points contain'd in thoſe Propoſitions, her Majeſty endeavour'd to obtain ſuch Explanations, and communicated them to the States; and if the Queen did not think fit to proceed in the Method of a Preliminary Treaty, which had prov'd ineffectual in 1709, and 1710, but upon Articles ſign'd by a Miniſter of *France*, authoriz'd

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thoriz'd by that King to open Conferences for a Peace, this might be juſtified by many Precedents of ſuch Treaties: That the Earl, during the whole Negotiation, had acted with ſincere Intentions to obtain a general Peace, for the Welfare of the Queen and her Kingdoms, and ſuch as might give reaſonable Satisfaction to her Allies, and was not conſcious of having trangreſs'd his Duty, either as a Privy-Counſellor, or Officer of State: That many of the Articles, with which he is charg'd, are complicated with ſuch Circumſtances, Aggravations, and Inferences, as may render it difficult for him to acknowledge ſome Facts, without ſeeming to acknowledge thoſe Circumſtances or Inferences; and therefore begg'd he might be allow'd to diſtinguiſh between the Acts themſelves, and the Inferences drawn from them; and that when he acknowledges any Fact, he may not be underſtood to acknowledge thoſe Conſequences which are deduc'd from it, unleſs it appear, that they were the Aim and Deſign of the ſaid Earl, or were the neceſſary Reſult of any Acts he had done.

His Anſwer to the firſt Article.

I. In Anſwer to the firſt Article, he, the ſaid Earl, ſaith, That he always had the greateſt Regard to her Majeſty's Honour and Safety, the Engagements ſhe was under to her Allies, and the Liberties of *Europe*: That he was never devoted to the French King, or had acted, while he was in the Treaſury or Privy-Council, contrary to his Duty in Defiance of Treaties, the Advice of Parliament, or her Majeſty's Declarations from the Throne. He denies that he form'd any Contrivance to ſet on Foot a ſeparate or deſtructive Peace with *France*, or knew of any ſuch; but believes, That in *April* 1711. *France* made ſome Propoſals of Peace, ſign'd by Monſieur *de Torcy*, Secretary of State to the French King, which were immediately communicated to the States; who declar'd themſelves ready to join in any Meaſures, her Majeſty ſhou'd think proper for obtaining a good Peace, and hoped ſhe would bring the *French* to explain their Propoſals; and thereupon her Majeſty ſent Mr. *Matthew Prior* to the Court of *France*, to obtain an Explanation of the firſt general Offers: But the Earl denies he adviſed the Queen to ſend Mr. *Prior* to make Propoſitions

ſitions of Peace, without communicating them to the Allies, or that, by his Privity, he communicated any Propoſitions, wherein *Britain* or the common Intereſts of *Europe* were betray'd, or knows that Mr. *Prior* had Power to make ſuch Propoſitions: That if any Article was inſerted in the Propoſitions to be made by Mr. *Prior*, that the Secret ſhou'd be kept till divulg'd by mutual Conſent, he denies it was inſerted by his Advice; and if any Inſtructions were given for not divulging Propoſitions which concern'd *Britain* in particular, they did not manifeſt any ſuch Deſign as is mention'd, ſince it was the undoubted Right of every Member of a Confederacy to demand particular Advantages for themſelves not inconſiſtent with their Alliances, and which were not to take place but on the Concluſion of a general Peace: And that the States-General, in the Treaties of 1709, and 1710. did the like for themſelves: But he believes, that to prevent any Jealouſies, even the Propoſitions that related to *Britain* in particular, were communicated to the Allies; and that her Majeſty was ſo far from treating ſingly for the Allies, that ſhe choſe to have all the Parties admitted to the Congreſs, to treat for themſelves; nor does the Earl know of any Negotiations of Peace, ſet on Foot by Perſons employ'd by her Majeſty, which were more advantageous to *France*, than *France* had ask'd, or that tended to create a miſunderſtanding between her Majeſty and her Allies. Vol. vi. p. 127.

II. To the ſecond Article the Earl ſaith, He believes that Mounſieur *Meſnager*, in the Year 1711. did come into *Great-Britain* with her Majeſty's Leave, and bring a Letter to her from the *French* King, acknowledging her Majeſty Queen of *Great-Britain*, and alſo expreſſing a Deſire of Peace: That it was the uſual Practice in moſt Nations, and eſpecially in *England*, for Privy Counſellors, by verbal Orders from their Sovereign, to confer with Foreign Miniſters; and that full Powers are given to Miniſters ſent abroad, for the Juſtification of Perſons with whom they treat, rather than to juſtifie the Miniſters themſelves; and denies that he did ſecretly, or without Authority, treat with *Meſnager*, or did adviſe or promote the making a private and ſeparate Treaty with *France*; but believes there

there was a Paper, ſtiled, *The Anſwer of* France, *to the preliminary Demands of* Great Britain *more particularly*, ſign'd by *Meſnager* only; to which was ſubjoin'd a Declaration of the Queen's Acceptance of thoſe Preliminary Articles, which were to be reduc'd into the uſual Form of Treaties, to the common Satisfaction of *Great Britain* and *France*, and this only in caſe of a general Peace; which Declaration might be ſign'd by the Lord *Dartmouth* and Mr. Secretary *St. John*; but ſubmits it to their Lordſhips whether this can be call'd a ſeparate Treaty; and believes that the Allies had early Notice of the ſaid Propoſals from *Great Britain*. He denies that the Intereſts of *Britain* were thereby given up to *France*, or the Duke of *Anjou* admitted King of *Spain*, ſince it was expreſs'd in theſe Propoſals, That her Majeſty expected the Advantages mention'd in them, what Prince ſoever ſhou'd poſſeſs the Monarchy of *Spain*; and he believes her Majeſty had then a Proſpect that *Spain* wou'd fall to another Prince. He denies he knew of any ſeparate Treaty, whereby the Intereſts of *Britain* were given up to *France*, or the Duke of *Anjou* admitted King of *Spain*, ſign'd by *Meſnager* on the Part of *France*, and by the Duke *Dartmouth* and Mr. *St. John* on the Part of the Queen; or that he aſſum'd Regal Power, or treated with the Enemy without Authority, or did any Thing to ſubvert the Conſtitution, or introduce illegal or dangerous Methods of tranſacting Affairs of State: That he never endeavour'd to diſſolve any Treaties her Majeſty was engaged in, or was privy to any Treaty whereby the Queen was brought under a Dilemma of ſubmitting to *France*, or loſing the Confidence of her Allies.

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III. As to the third Article, he denies, That to diſguiſe and carry on any private Negotiations, he did adviſe the preparing a Set of general Preliminaries, on the Part of *France*, to be ſign'd by *Meſnager*, or advis'd her Majeſty to receive them; but believes certain Articles, call'd Preliminary Articles on the Part of *France*, ſign'd by *Meſnager*, were receiv'd by her, and communicated to the Miniſters of the Allies then in *England*, as the Grounds whereon they might treat of a general Peace: But why the Adviſing the receiving them ſhould be ſtiled Impious Advice, ſince it is not againſt any known Law,

Law, and the Proceedings upon ſuch Preliminaries cou'd not be more unſafe, than the Proceeding without any Preliminaries, he cou'd not conceive: And if any Treaty was ſign'd by the Lord *Dartmouth*, or Mr. *St. John*, on the Part of *England*, or by *Meſnager* on the Part of *France*, it was not conceal'd from the Allies, the Council, or Parliament, by his Advice; nor did he adviſe the communicating the ſaid general Preliminaries to the States, as a Foundation for opening the Conferences of Peace with *France*; nor did he adviſe the Inſtructions, mention'd in this Article, to be given to the Earl of *Strafford*; but believes the ſaid Inſtructions were well warranted by the Truth of the Facts: That the Propoſitions ſent over to *France*, were not ſo general as thoſe of Monſieur *Torcy*, nor in any reſpect enſnaring or deſtructive to *Britain* or the Allies; nor is he conſcious that ever he adviſed the giving Inſtructions to Ambaſſadors, whereby the Truth and Sacredneſs, which ought to conſtitute ſuch Inſtructions, were proſtituted, or the Honour of her Majeſty betray'd: And hopes no Inſtance can be given, where her Majeſty's Royal Hand was made the Inſtrument to advance the Intereſt of the Common Enemy.

IV. To the fourth Article he ſays, He does not remember what Repreſentations were made by Mr. *Buys* to her Majeſty; but admits that at a Committee of Council there might be made ſuch a Declaration to Mr. *Buys*, as in the ſaid Article is mentioned; and that it was agreeable to Truth and the Sentiments of her Majeſty, though he did not adviſe it; nor does he know wherein the ſaid Articles, ſign'd by *Meſnager*, and accepted by the Lord *Dartmouth* and Mr. *St. John*, were inconſiſtent with ſuch Declarations, or how her Majeſty was diſhonoured, or her Allies abuſed thereby; or that any Negotiation enter'd into with *France*, was dangerous in itſelf, or fatal in its Conſequences. Vol. vi. p. 129.

V. As to the fifth, he admits, That the Biſhop of *Briſtol* and the Earl of *Strafford* were appointed her Majeſty's Plenipotentiaries to treat of Peace; and that their Inſtructions were, as in the ſaid Article is ſet forth: And that when they were ſo inſtructed to inſiſt that *Spain* and the *Weſt-Indies* ſhou'd not be allotted to the Houſe of *Bourbon*, no Treaty had been

been agreed, whereby *Spain* and the *Weſt-Indies* ſhou'd remain in a Branch of that Houſe; for her Majeſty had then juſt Ground to believe, that King *Philip* wou'd be induc'd to abandon *Spain* and the *Weſt-Indies*, and content himſelf with the Dominions of *Savoy* and *Sicily*; and the Queen declar'd, ſhe believ'd the Proſpect King *Philip* had of ſucceeding to the Crown of *France*, wou'd be an Inducement to him to be eaſy with that Allotment: And he believes, therefore, that whoever contriv'd thoſe Inſtructions, prepar'd them conformable to her Majeſty's real Sentiments: And if King *Philip*, upon Information that the then Dauphin was likely to live, alter'd his Sentiments, and choſe rather to renounce the French Monarch, he thought no Perſon, who acted in the Service of the Crown, cou'd be ſafe, if it might be charg'd on him as a Crime, that he adviſed Inſtructions which by intervening Circumſtances afterwards became improper; nor does he know how her Majeſty's conſenting to ſuch Inſtructions, cou'd imply any Deſign to impoſe upon his Imperial Majeſty or the Allies, or to conceal any Negotiations between *Great Britain* and *France*; and he is confident it will not appear by any of his Actions, on the ſtricteſt Scrutiny, that he ever enter'd into any Confederacy with the Miniſters of the Enemy, or had any Deſign to impoſe on his Imperial Majeſty, or any of the Allies, or was privy to any Secret Treaties between *Great Britain* and *France*, whereby any Reproach cou'd be brought to the Crown, or any Treaties violated wherein her Majeſty was engaged.

Vol. vi. p. 130. VI. To the ſixth, he admits, That the Progreſs of the Negociation of Peace was delay'd by Debates, concerning the Enemy's Refuſal to give their Anſwer in Writing to the Demands of the Allies; but does not know the Miniſters of *Britain* contributed thereto; and if her Majeſty authoriz'd her Miniſters, during that Time, to write directly from *England* to *France*, to facilitate the general Negotiations of Peace, he doth not apprehend the Queen was debarr'd from ſo doing by any Law, or that by conſtituting the ſaid Plenipotentiaries, ſhe had ſo far delegated her Authority, as to be diſabled to negotiate any Matters conducing to that End in ſuch other Manner as ſhe ſaw fit: But denies that he

he knows of any Negotiaton, relating to the Peace, carried on without the Communication thereof to her Allies; or that he aſſum'd Regal Authority, in treating with *France*, or concerted any Terms of Peace prejudicial to her Majeſty or her Allies.

VII. To the ſeventh he anſwers, That he never advis'd her Majeſty to accept of a Treaty with *France*, as this Article charges; but acknowledges, that if he had been call'd upon to give his Opinion, concerning the leaving *Spain* and the *Weſt Indies* in the Poſſeſſion of a Branch of the Houſe of *Bourbon*, and accepting the Renunciation of the Duke of *Anjou*, he doth not at preſent ſee any Reaſon why he might not have been of Opinion for leaving *Spain* and the *Weſt-Indies* to the preſent Poſſeſſor, rather than have continued a War ſo burthenſome to the People, and ſo impracticable upon the Foot it then ſtood; and if ſuch Memorial, as is mentioned in this Article, was ſent by any Miniſter of *France* to the Secretary of State, he looks upon the ſame as a Proof of the Earneſtneſs of the Court of *France* to avoid ſuch Renunciation, which might more effectually prevent all Poſſibility of annexing the Crown of *Spain* to that of *France*.

VIII. In anſwer to the eighth Article, he admits, That the late Queen, on the 7th of *December*, 1711. did recommend it from the Throne to make Proviſion for an early Campaign, in order to carry on the War with Vigour; and as the beſt Way to render the Treaty of Peace effectual; and that Supplies were granted accordingly; and her General, the Duke of *Ormond*, might be impower'd to declare her Reſolution of carrying on the War, and to conſert with the Allies, the proper Meaſures of entring upon Action: But whether the Allies were ſuperior to the Enemy, or would have been able, by Battle or Siege, to have better'd their Affairs, he is not able to ſay; but it is obvious to every one, that if any Diſaſter had happen'd to the Allies at that Juncture, it muſt have been fatal to them; and though the Divine Aſſiſtance had been very remarkable in the many Victories her Majeſty's Forces had obtain'd, yet her Piety was ſuch, that ſhe wou'd not tempt Providence by hazarding the Blood of her Subjects, without the greateſt Neceſſity, when ſhe had ſo near a Proſpect of the Concluſion of a Peace,

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Peace; and ſhe might thereupon ſend Orders to the Duke of *Ormond*, to avoid engaging in any Siege or Battle; which her Majeſty was at Liberty to do when ſhe thought proper, as well as the Deputies of the States, who had often refus'd to Engage in Siege or Battle upon ſuch Motives as they thought reaſonable, when the Generals of the Allies, and their own Generals were of Opinion, they had a viſible Advantage of the Enemy: Nor was he ever inform'd of any ſure Proſpect the Confederate Army then had of gaining new Conqueſts, or of being enabled to have forc'd better Terms of Peace, than there was at that Time a likelihood of; but on the contrary was inform'd, That the Forces of *France* were ſuperior to the Allies in Number, eſpecially in Horſe: However, he denies his adviſing the ſending any ſuch Orders to the Duke of *Ormond*, as is mention'd, or that he had any Deſign to diſappoint the Expectations of the Allies, or to give Succeſs to any ſecret Negotiations with the Miniſters of *France*. He denies alſo his adviſing the ſending thoſe Orders to the Biſhop of *Briſtol*, one of her Majeſty's Plenipotentiaries, to declare to the Dutch Miniſters, That her Majeſty look'd upon herſelf, from their Conduct, to be under no Obligation whatever to them; nor is he conſcious he ever gave any Counſels, by which the Progreſs of the Victorious Arms of the Confederates were ſtopp'd, or which tended to deſtroy the Confidence between her Majeſty and her Allies, or make the French King Maſter of the Negotiations of Peace.

IX. To the ninth, He denies that he warranted, or knew of the ſeparating her Majeſty's Forces from the Confederate Army; but believes, that the Conferate Generals did, in *June* or *July*, 1712. propoſe to the Duke of *Ormond* to decamp from the Ground where they then lay, and to proceed to *Landrecy*, in order to form the Siege of that Place; and that the Duke of *Ormond* wou'd not conſent thereto, but gave Notice to the ſaid Generals, That if they decamp'd, they muſt not expect that he wou'd follow them; (and believes there may be Inſtances given, where Generals of other Potentates in the Alliance have refus'd to comply with what has been propoſed to them by her late Majeſty's General;) and he hath heard, that notwithſtanding ſuch

ſuch Notice from the Duke of *Ormond*, the ſaid Generals ſeparated themſelves and their Forces from the ſaid Duke, and marched towards *Landrecy* without him; and that the Generals of the Auxiliary Troops, paid by her Majeſty, refus'd alſo to continue with the Duke, or obey his Orders: And he ſuppoſes it might proceed from that Inſtance of Diſobedience in thoſe Troops, that ſhe did not think fit immediately to pay the Arrears of thoſe Forces which had ſo obſtinately withdrawn themſelves from her General. He believes that the Forces of ſome of the Allies were engaged in the unfortunate Action of *Denain*, that the Siege of *Landrecy* was raiſed, and the Towns of *Queſnoy*, *Bouchain*, and *Doway*, were ſome Time after retaken by the *French*; but thoſe Diſaſters might have been prevented by a Compliance with her Majeſty's Meaſures. Vol. vi. p. 132.

X. In Anſwer to the tenth, he denies that he conſerted a private Negotiation for a Suſpenſion of Arms, or adviſed her Majeſty to ſend over *Henry* Viſcount *Bolingbroke* to *France*, to ſettle ſuch Suſpenſion, but believes that about the 19th of *Auguſt*, 1712. *N. S.* a Suſpenſion of Arms was agreed on for four Months, and believes it will appear, That the ſaid Suſpenſion was only a Continuance of a former Agreement for a Ceſſation of Arms, into which her Majeſty had invited the Allies; and believes her Majeſty might be induc'd to deſire ſuch Ceſſation, as was uſual among Princes engaged in War, during a Negotiation of Peace, whereby the *Britiſh* Merchants enjoy'd a free Trade to the ſeveral Countries of *Europe*, as the *Dutch* had done during the War; nor did her Majeſty intend the leaſt Violation of any Treaties with her Allies, or to expoſe them to the Inſults of the Enemy thereby; nor did he diſcern how thoſe Conſequences could enſue, without the wilful Default of the Allies; but, however, the Earl could not be charg'd with any Conſequences of that Suſpenſion which he never adviſed.

XI. In Anſwer to the eleventh, he ſaith, he believes that in the Negotiations of Peace, the *French* King did inſiſt on the yeilding up of *Tournay* to him by the States; but that the States deſiring her Majeſty's Interpoſition with the *French* King on their

Behalf, ſhe did prevail with him that the ſaid Town and Fortreſs of *Tournay* ſhou'd be continued to the States-General, as Part of their Barrier; but the Earl denies, that during the War he did Aid or adhere to the *French* King, or adviſe the Enemy in what Manner *Tournay* might be gain'd from the States-General. He admits, That during the Negotiations of Peace, he was one of her Majeſty's Privy Council, and gave his Advice as ſuch; but inſiſts, That for a Privy Counſellor, or Miniſter of State, during Negotiations of Peace, to adviſe concerning the yeilding or giving up any Town or Province on the Concluſion of a Peace, was not High Treaſon by any Law of this Realm; and that ſuch Conſtruction wou'd deprive the Crown of the Advice of the Members of the Priv y-Council, by deterring them from giving ſuch Advice, as by their Oaths and Duty they were oblig'd to do, and overthrow all Means of reſtoring Amity among Princes, and muſt render the Law in caſe of High Treaſon very uncertain, and highly dangerous to the Lives and Liberties of the Subject.

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XII. In Anſwer to the twelfth, he does not admit that her Majeſty was engaged by Treaties, as in the ſaid Article is alledged; but denies he did ever aid or adhere to the Duke of *Anjou*, or adviſe the giving up *Spain* or the *Weſt Indies* to him; but if he had, ſuch Advice cou'd not have amounted to High Treaſon, inſiſting as in his Anſwer to the laſt Article he had inſiſted.

XIII. To the thirteenth the Earl ſaith, That he believes her Majeſty might think it reaſonable, conſidering the Share and Burthen her People had ſuſtain'd in the War, that *France* ſhou'd, in the firſt Place, adjuſt the Intereſt of *Britain*, but doth not know of any Conceſſions, made by the Miniſters of *Great-Britain*, to promote the Intereſts of *France* againſt the Allies, or to enable *France* to impoſe the Terms of a general Peace; denies that he was engaged in Concert with *France* in any Negotiation deſtructive to his Country, or to Sacrifice the Commerce of *Great-Britain* to the Aggrandiſement of *France*; denies that he adviſed the Demands for *Great Britain*, in Point of Commerce, ſhou'd be made in looſe, general, or inſufficient Terms; and believes, when it was conſidered what Advantages were

were likely to enſue to the Commerce of *Great Britain* by the Aſſiento Contract, and the Liberty of Trading to the *Spaniſh Weſt Indies*, by the Ceſſion of *Arcadia*, the Bay and Steights of *Hudſon*, the Iſland of *St. Chriſtophers*, *Newfoundland*, the Iſland of St. *Peter*, with other adjacent Iſlands, by the Demolition of *Dunkirk*, and the Ceſſion of *Port-Mahon* and *Gibraltar*, it wou'd not be thought the Commerce of *Great Britain* had been neglected by her Majeſty in the late Treaties of Peace; and though the Earl doth not admit that he adviſed the ninth Article of the Treaty of Commerce with *France*, yet he obſerves that nothing is poſſitively ſtipulated in that Article, but the whole is conditional, and left to be determined by the Wiſdom of Parliament; and hopes it will never be thought an Act of Treachery, to refer any Article of a Treaty to the Conſideration of the Parliament. He denies that he adviſed, That *France* ſhould have Liberty of Fiſhing and drying Fiſh on *Newfoundland*, or the making a Ceſſion of the Iſle of *Cape Breton* to *France*; nor doth he know that *Cape Breton* was ever Part of the Territories of *Great Britain*, but doubts not to make it appear, that many Advantages in Trade were ſtipulated for *Britain* in the late Treaties of Peace and Commerce, which have been enjoy'd by the Subjects of this Kingdom ſince the concluſion of the Peace, notwithſtanding the Parliament hath not thought fit to make any Act to enforce the ninth Article of the Treaty of Commerce with *France*; and as the Earl denies his being concern'd in any Violation of Treaties, or in carrying on the Meaſures of *France*, or in Negotiations which wou'd terminate in the Sacrifice of the Commerce of *Great Britain* to *France*, ſo he obſerves, with Satisfaction, the flouriſhing Condition of the Trade and Navigation of theſe Kingdoms by means of the late Peace, in the great Increaſe of the Number and Tonnage of Shipping, of the Exportation of the Woollen Manufactures, the Fiſh, and other Produce of this Kingdom, whereby the Cuſtoms have been greatly advanc'd, three Millions of Gold and Silver lately Coin'd, and the *Exchange* been all along in favour of *England* to and from all Parts of *Europe*.

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XIV. In Anſwer to the fourteenth, the Earl doth not admit that he form'd the Project for diſpoſing of *Sicily* to the Duke of *Savoy*; but in Juſtification of her Majeſty's Conduct in that Matter, the Earl obſerves, that by the grand Alliance it was agreed, That the Confederates ſhou'd endeavour to recover *Sicily* from the Enemy; that his Imperial Majeſty might have Satisfaction for his Pretenſions to the Spaniſh Monarchy; and that the Trade of *Britain* and *Holland* might be better ſecur'd: But ſince the Empire was now fallen to *Charles* III. who was then a younger Branch of the Houſe of *Auſtria*, and ſince the *Spaniſh Flanders*, *Milan*, and *Naples*, might ſeem a reaſonable Satisfaction for his Imperial Majeſty's Pretenſions to the *Spaniſh* Succeſſion, and ſince the Trade and Navigation of *Britain* and *Holland* might be as well ſecur'd by the Diſpoſition of *Sicily* to the Duke of *Savoy*, and it might be more difficult to obtain it for the Houſe of *Auſtria* than for that Duke; and there were Grounds to believe, that the Princes and States of *Italy* wou'd ſuffer any Extremities, rather than ſubmit that *Sicily*, together with *Milan* and *Naples*, ſhou'd be in the Hands of the Emperor, the ſaid Earl did not diſcern, how the diſpoſing the ſaid Kingdom to the Duke of *Savoy* cou'd be thought unjuſt to his Imperial Majeſty, or a Violation of the Grand Alliance; and ſince it was allow'd, the Duke of *Savoy* never made any Application to obtain *Sicily* for himſelf, it is evident that the Perſons who adviſ'd the Queen to that Allotment, did not act upon private Intereſt, or had any other View than the Security of the Trade and Navigation of *Britain* and *Holland*, and the Preſervation of the Ballance of Power in *Europe*.

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XV. To the fifteenth he ſaith, he was always of Opinion the Word of the Sovereign was Sacred, and that all Communications from the Throne to Parliament ought to be true, and that it becomes all Miniſters to maintain the Honour of the Crown with the utmoſt Exactneſs; nor did he know that ever he had been defective in his Duty in this Particular, or took upon him any arbitrary or unwarrantable Authority, much leſs the Chief Direction of her Majeſty's Councils. He believes her Majeſty did, on the 7th of *December*, 1711. declare, That her

her Allies, especially the States-General, had by their ready Compliance for opening a Treaty of General Peace, expres'd their Confidence in her; and in Vindication of her Majesty, who was a Princess of strict Piety and Truth, he observes, that the States-General sent over Mr. *Buys* to her, with Letters full of Assurances of Respect for her Person, and their Resolutions not to separate themselves from her; and the said Mr. *Buys*, immediately upon his Arrival, deliver'd Pass-Ports for the French Ministers to come to *Utrecht*, and, at a Meeting of several Lords of the Council, shew'd his Approbation of sending circular Letters to invite the rest of the Allies to the General Congress; he also exhibited full Powers for entring into a new Treaty, whereby the Queen and the States shou'd be mutually engaged to each other in making War and Peace, to Guarantee the Peace when made, and to invite the rest of the Allies to enter into such Guarrantee; all which being previous to the 7th of *December*, 1711. it is evident her Majesty's Declaration from the Throne was founded on the strictest Truth; and whoever consider'd what had been done by her Majesty for the Service and Satisfaction of all her Allies in the ensuing Treaty, wou'd acknowledge she had done her utmost to procure for the Allies, and especially for his Imperial Majesty, all that they could reasonably demand, agreeable to her Speech on the 7th of *December*, and her Message of the 17th of *January* following: And if by any extraordinary Demands, or groundless Jealousies, or other Accidents, her Majesty was not able to obtain for the Allies all the Advantages she desir'd, this wou'd not derogate from the Truth and Sincerity of her Expressions; nor can one, who considers the Efforts she had made in *Spain* for so many Years, entertain a doubt but that she had done her utmost for recovering it from the Duke of *Anjou*. And the said Earl did not see how her Majesty cou'd be charg'd with uttering any Falsity, when she takes notice how groundless the Reports were that had been spread of a separate Peace, when there was not then, or at any other Time, the least Foundation for such Report, since only some few Points were adjusted, relating to the Interests of her own Kingdoms, and even those were to have no Effect, but on the Con-

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cluſion of a General Peace, and were, before the Concluſion of the Peace, communicated to the Allies. He does not conceive that the Propoſal of the Renunciation was merely ſpeculative, but that it was of ſuch a Nature as wou'd execute itſelf, and keep the Crowns of *France* and *Spain* more effectually divided than ever, if it were conſider'd, that it did not conſiſt only in the Renunciation of King *Philip* of his Right to the Crown of *France*, but that there was a Title to that Crown thereby given to the Duke of *Orleans*, and after him to the reſt of the Princes of the Houſe of *Bourbon*, who cou'd not be preſum'd to want Will or Power to take Poſſeſſion of the Crown of *France*, in Oppoſition to a Prince, at ſuch a Diſtance, who had renounc'd it.

XVI. To the ſixteenth he inſiſts, That it is the undoubted Right and Prerogative of the Sovereign to creat Peers, as well in Time of Parliament as at any other Time, and the Exerciſe of this Branch of the Prerogative is declar'd in the Preamble of all Patents of Honour, to proceed *ex mero motu*, *of mere Grace and Favour*; nor are the Warrants for ſuch Patents ever communicated to the Privy Council or Treaſury, as thoſe of ſome other Patents are, and therefore as High Treaſurer or Privy Counſellor, he cou'd not have any Knowledge of them; nevertheleſs, if her Majeſty had acquainted him with her Intentions, and ask'd his Opinion whether they were proper Perſons to be promoted to that Dignity, he believes he ſhou'd have approv'd her Majeſty's Choice, and does not apprehend he ſhould have been guilty of any Breach of his Duty, or violation of the Truſt repoſed in him, ſince they were all Perſons of Honour and diſtinguiſh'd Merit, and the Peerage thereby was not greatly increas'd, conſidering ſome of them wou'd have been Peers by Deſcent, and many Titles of Honour were lately extinct: And the Earl believes many Inſtances might be given, where this Prerogative had been exerciſed by former Princes in as extenſive a Manner, particularly by *Henry* VIII. King *James* I. and his late Majeſty King *William*;
Vol. vi. p. 137. concluding, That in the whole Courſe of his Life he had always lov'd the Eſtabliſh'd Conſtitution, and, when he had the Honour to be in Employment, had done his utmoſt to Preſerve it.

In

In Anſwer to the firſt additional Article, he ſaith, That in *January* 1710. an Expedition was projected, for making a Conqueſt of the City of *Quebeck* in *Canada*, &c. which he not thinking feaſible at that Time, he expreſs'd his Diſlike of the Undertaking, and after that did not think it proper to appear at the Meetings where it was concerted; but does not believe that Expedition was ſet on foot with any Deſign to promote the Intereſt of the *French* King, weaken the Confederate Forces in *Flanders*, or to diſſipate the naval Forces of the Kingdom. And when others of her Majeſty's Council, better acquainted than he was with that Affair, did judge it practicable, he did not think it proper, upon the Strength of his ſingle Judgment, further to oppoſe an Expedition which, if it had ſucceeded, would have given a ſenſible Blow to the Settlements and Trade of *France* in *America*; and he is ſatisfied, that thoſe of her Majeſty's Council, who did approve the Expedition, acted with a ſincere Deſire for the publick Good; and the ill Succeſs of it might be chiefly owing to contrary Winds, and other unforeſeen Accidents; nor does he believe the common Enemy receiv'd any Advantage by the detatching thoſe Forces from *Flanders*, to ſerve in this Enterprize, becauſe her Majeſty's General had Orders to ſupply their Places with other Troops, if he judg'd it neceſſary; that the Sum of 28000*l.* was demanded at the Treaſury in *June* 1711. on Account of Arms, Accoutrements, and Merchandize, ſaid to be ſent on the ſaid Expedition; but he was ſo far from adviſing the ſame ſhould be paid, that he put a Stop to it, till he had done all he could to examine into the Expenditure of the ſaid Money; but not being able to diſcover any juſt Cauſe why it ſhould not be paid, and receiving her Majeſty's Orders for the Payment of it, he did counterſign a Warrant for the Payment of the ſame. And whatever Suſpicions he might entertain in his own Mind, he did not upon Examination find there was ſufficient Proof to juſtify the laying them before the Parliament. And though the Papers relating to that Expedition were laid before the laſt, and have been all along in the Power of the preſent Houſe of Commons, he hath not heard that any Fraud has been made out in that Affair; and he hopes it will not be imputed to him

His Anſwer to the firſt additional Article.

as a Fault, if he had uſed his Credit to keep the Houſe of Commons from examining this Affair in that Juncture, when by an unſeaſonable Enquiry, before proper Proof could be had, the Fraud, if there were any ſuch, would be likely for ever to eſcape unpuniſh'd. But he denies he ever exerciſed, or had any arbitrary Power or Influence, either in the Privy Council, or the great Council of the Nation, or deſign'd to prevent Juſtice being done to the Queen or Nation. And the ſaid Earl is not conſcious, that by any Letter or Memorial to her Majeſty, he hath acted contrary to his Duty; but ſays, it would be a Matter of particular Hardſhip, inconſiſtent with the Rules of Government, and without Precedent, if the moſt ſecret and intimate Papers and Letters wrote to her Majeſty by her ſpecial Command, and for her private Peruſal, ſhould be imputed to any one as a Crime; and if a Quotation from ſuch Letters could be alledg'd againſt the Earl, he doubts not but there might appear from her Majeſty's other private Papers, what would juſtify him in many of the Particulars with which he is charged.

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II. In Anſwer to the ſecond additional Article, he admits, That in *October*, 1711. her Majeſty did ſign a Warrant, directed to him, then High-Treaſurer, for the Payment of 13000*l.* to *John Drummond* Eſq; and that in Purſuance of the ſaid Warrant, the ſaid Earl did ſign a Warrant for the Payment of the ſaid 13000*l.* but takes the Words [*for ſpecial Services of the War*] to have been inſerted by Miſtake of the Clerks; and he believes the Clerks of the Treaſury know, that the Moneys which aroſe from the Sale of Tin were the Queen's proper Money, and not appropriated to the Uſe of the War. And the ſaid Earl having been acquainted with the Services the ſaid Mr. *Drummond* had perform'd, by Order of the late Earl of *Godolphin*, in borrowing Money upon Tin at a low Intereſt, the Earl did ask Mr. *Drummond*'s Conſent, that a Sum in Tin-Tallies might be ſtruck in his Name; and with his Conſent did direct, that Orders, amounting to the Sum of 13000*l.* ſhould be charg'd in the Regiſter of the Exchequer, on the Monies ariſing by the Sale of Tin, in the Name of the ſaid Mr. *Drummond*, who afterwards indors'd the ſaid Orders at the Earl's Requeſt, and left

left them in the Treaſury; but doth not acknowledge that the ſaid Orders and Tallies came to his Hands, or were diſpos'd for his Uſe. But in order to give a true State of this Affair, the Earl ſays, that upon his firſt attending the Queen after he was wounded, ſhe was pleas'd to tell him, She deſign'd him a Sum of Money; upon which he repreſented the bad State of the Civil Liſt; and though her Majeſty often afterwards ask'd him, why he did not find a Way for receiving the Money ſhe intended him, he made no Step towards it for near ſix Months; when ſhe told him, ſhe was reſolv'd to have it done; and as in Matters of Bounty ſhe had made uſe of Tin-Tallies for other Perſons, ſhe was pleaſed to mention them herſelf, and order'd Warrants to be prepar'd for the Sum ſhe intended him; and the ſaid Tallies and Orders were ſtruck in Mr. *Drummond*'s Name; and from that Time the ſame were kept under the Earl's Direction, and for his Uſe. And the ſaid Earl was advis'd, that nothing further was requiſite to be done, for ſecuring his Intereſt in the ſaid Tallies, till an Accident happen'd, which made it neceſſary, for further Security, to have the ſaid Warrant as a Declaration of Truſt, and accordingly ſuch a Warrant was ſign'd by her Majeſty, directed to the ſaid Mr. *Drummond*, (wherein is a Recital, that her Majeſty gave the ſaid Sum of 13000 *l.* to the Earl, in Conſideration of his Services and Sufferings in her Service, and mentions the Attempt made upon his Life by *Guiſcard*;) and he believes the ſaid Warrant was drawn by Mr. *Lowndes*, Secretary of the Treaſury; and by what Means the ſame was omitted to be enter'd in the Treaſury, he knows not; but on hearing there was a Diſcourſe about the ſaid 13000 *l.* he ſent a Copy of the Warrant to the Officers of the Treaſury, without ſignifying any Deſign to have it enter'd, well knowing it receiv'd its Authority from the Sign Manual, which wanted no additional Force from any Entry in the Treaſury Books. And the ſaid Earl ſaith, That the ſaid Grant, according to the Diſcount on thoſe Tallies at that Time, amounted to 10000 *l.* or thereabouts, for which he acknowledges the great Bounty of her Majeſty; but obſerves, that much larger Grants have been made to other Miniſters of State, while the Neceſſities of the Crown have been equally

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equally preſſing: And the Earl ſaith, that in this, or any other Part of his Adminiſtration, he never was guilty of any Corruption, or Breach of Truſt; but that he managed the publick Treaſure in the moſt frugal Manner; and in every Employment to which he was called, he was always contented with the accuſtomed Profits; that he never made any Advantage by the Diſpoſal of Places in his own Giſt, or by the Recommendation of Perſons to her Majeſty; nor did he, in or out of Place, ever receive any Penſion from the Crown; that as he came with clean Hands into her Majeſty's Service, ſo he went out of it, not only with clean, but almoſt empty Hands, having ſpent therein moſt Part of the Profits of the Places he enjoy'd; ſo that notwithſtanding this Bounty of the Queen's, he could with great Truth affirm, that his private Fortune had received a very inconſiderable Addition by the Employments he held.

III. In Anſwer to the third additional Article, ſaith, That *Matthew Prior* Eſq; being ſent by her Majeſty to the Court of *France*, Warrants were ſign'd in the uſual Form for Payment of ſeveral Sums of Money to him, between the 27th of *Auguſt*, 1712. and the 10th of *July*, 1714. amounting to 12,360 *l.* and the ſaid Sums were paid, purſuant to the Authority the Earl received from her Majeſty, according to his Duty. He ſaith, he doth not know, that by any Law there ought to be certain Allowances for the Maintenance of Ambaſſadors, and other publick Miniſters abroad; but that her Majeſty was at Liberty to vary ſuch Allowances as ſhe thought fit; and believes, there are Inſtances of Ambaſſadors and Plenipotentiaries, who have been allow'd 1500 *l.* for their Equipage, 100 *l.* a Week for their ordinary Entertainment, and 1600 *l.* for Extraordinaries, beſides farther Sums for ſpecial Services; and if Mr. *Prior* had been paid on that Foot, he would have been entitled to a greater Sum from the Crown. He ſaith Mr. *Prior* was ſent into *France* to carry on the Negotiations of a General Peace; but denies he was a Creature of the Earls, or that he adviſed her Majeſty to ſend him as her Plenipotentiary to the *French* King without the Privity of the Allies, or to promote any dangerous Practices with the Miniſters of *France*, or that he combin'd with Mr. *Prior* to defraud

fraud her Majeſty under Colour of that Employment, or that he gave him an unlimited Credit, as charged in this Article. He ſaith, that *Thomas Harley* Eſq; having been twice ſent by her late Majeſty to the Court of *Hanover*, the Earl, then High Treaſurer, did pay him 5560 *l.* by her Majeſty's Authority, according to his Duty, out of the Moneys appropriated to the Civil Liſt; and if Mr. *Harley* had been paid in Proportion to Allowances made to Ambaſſadors, it would have amounted to a greater Sum: And denies that he ever entered into any Combination with him, or any other Perſon to defraud her Majeſty. Vol. vi. p. 140.

IV. In Anſwer to the fourth additional Article he denies, that he ever held any Correſpondence with *Mary* the Conſort of the late King *James* II. or ever intended to promote the Intereſt of the Pretender: Nor does he believe, that *Gualtier* was employed as an Agent between the Miniſters of *Great Britain* and *France*, in tranſacting any Affaires relating to the Pretender; nor did the ſaid Earl ever undertake to procure the Payment of the yearly Sum of 47,000 *l.* or any other Sum to the Uſe of the ſaid Conſort, during her Life; but the ſaid Earl admits that the late King *James* II. did by Letters Patents, dated the 28th of *Auguſt*, 1685. grant to *Lawrence* Earl of *Rocheſter*, *&c.* divers annual Sums, amounting to 37,328 *l.* 13 *s.* 7 *d.* payable out of the hereditary Exciſe and Poſt-Office, to hold to them and their Heirs, during the Life of the ſaid Conſort, in truſt for her; and by other Letters Pattents, dated the 3d of *December*, 1686. did grant his ſaid Conſort a Penſion of 10,000 *l.* during her natural Life; whereby the hereditary Exciſe, *&c.* became chargeable with the ſaid yearly Sums; and he admits the ſeveral Acts of Parliament mentioned in this Article; but ſays, there is a general ſaving in them of all Perſons, Rights, and Claims to, or out of the ſaid Revenues: And he admits the other Act for raiſing 500,000 *l.* for the Payment of the late Queen's Debts, *&c.* But he ſaith, he hath heard that the ſaid Conſort of the late King *James* II. eſteeming herſelf entitled to the aboveſaid Annuities, did authorize the ſaid *Gualtier* to demand and receive for her Uſe all Sums of Money, which from *Lady-Day*, 1713. were become due upon them; and that *Gualtier* thereupon applying

plying himſelf to her late Majeſty, ſhe ſign'd a Warrant to the Earl, then High Treaſurer, to the Effect in the Article mentioned; and that he did thereupon direct two ſeveral Warrants to the Auditor of the Receipt of the Exchequer to the Effect in the ſaid Article ſet forth: And as he knew that the Jointure of the ſaid Conſort had been confirmed by Act of Parliament, and that by ſome private Article
Vol. vi. p. 141. at the Treaty of *Ryſwick*, Proviſion had been made in relation to it, and the Legality of the Demand not being doubted by her Majeſty's Counſel at Law, the Earl thought it his Duty to pay Obedience to it; and being a Debt, thought himſelf ſufficiently authoriz'd to pay it out of the ſaid Sum of 500,000 *l.* raiſed for the Payment of her Majeſty's Debts. He acknowledges alſo, that the ſaid *Gualtier* coming into *England* with Letters of Credence from the *French* King, her Majeſty was pleaſed to direct a Preſent to be made him, as was uſual to publick Miniſters; and ſhe was the rather induced to it, becauſe the ſaid *Gualtier* had been inſtrumental with the *French* King in obtaining the Releaſe of the poor Proteſtants who had ſuffered on Board the Gallies on Account of Religion: And her Majeſty did ſign a Warrant directing the Payment of 1000 *l.* to *Daniel Arthur*, in this Article mentioned, to the Intent it might be paid to the ſaid Monſieur *Gualtier*, on the Account aforeſaid; and he believes the Money was paid accordingly.

V. To the fifth additional Article he anſwers, that he believes a Perſon ſtiling himſelf *Lileſh*, or *Lawleſs*, did, in 1712 or 1713. come into *England* with Letters of Credence to her Majeſty from the King of *Spain*, to treat about carrying *Britiſh* Merchandizes to the *Spaniſh Weſt Indies*; and that before his Return to *Spain*, her Majeſty order'd 1000 *l.* to be paid him out of the Moneys appropriated to the Civil Liſt, which the Earl in Obedience to ſuch Orders paid accordingly: But he believes that when the ſaid *Lawleſs* was admitted to the Queen's Preſence, he was generally thought to be a natural *Spaniard*, and from the Advantages of the Licenſes he brought for carrying the *Britiſh* Merchandizes to the *Weſt Indies*, he expected a much larger Preſent: However, the Earl denies that he was informed before the Arrival of the ſaid *Lawleſs*, of his coming hither

hither; or, after his Arrival, did ſee him, or know of his being here before he was introduced to her Majeſty, it being uſual for publick Miniſters to be introduced by thoſe Servants to whoſe Office it belongs, without conſulting any other Miniſter of State therein; and it appeared when this Matter was before the Houſe of Peers, that the noble Lord who introduc'd the ſaid *Lawleſs* to the Queen, did not then know he was not a Native of *Spain*; and it was a long Time after he was introduc'd, before the Earl knew he was not a natural *Spaniard*; though after he had remain'd a conſiderable Time in *England*, the Earl was inform'd he was a Native of *Ireland*, and departed out of that Kingdom in his Youth, and had ſince been in the *Spaniſh* Service; but did not know the ſaid *Lawleſs* had been guilty of High Treaſon, or ſerved in Arms againſt the Crown: And the ſaid Earl denies that he adviſed her Majeſty to ſign a Warrant for Payment of the ſaid 1000 *l.* to *Daniel Arthur*, that was intended for the ſaid *Lawleſs*, or gave any Directions for the Payment thereof contrary to her Majeſty's Intentions. And the Earl admits that ſome other Sums of Money, amounting in the whole to 915 *l.* were paid in Satisfaction of Moneys advanced to the ſaid *Lawleſs*, in part of what was agreed to be advanced to his Catholick Majeſty on the *Aſſiento* Company; but denies that he directed the Payment of any other Money, whatſoever, out of the Treaſury to the ſaid *Lawleſs*, or knew of any, except the 1000 *l.* above ſpecified; that he never adviſed the introducing, or treating with the ſaid *Lawleſs*, under the feigned Name of *Don Carlo Moro*; or that he ſhould be received at all as a publick Miniſter here: He denies that he had the leaſt Knowledge that the ſaid *Lawleſs* had ever been Miniſter or Agent for the Pretender at *Madrid*; or had the leaſt Suſpicion that he was ſent into *England* to promote the Intereſt of the Pretender; nor was he conſcious he had done any Thing to expoſe the Perſon of her ſacred Majeſty, countenance any Emiſſary of the Pretender, or encourage his Adherents to the Danger of the Proteſtant Succeſſion in the Houſe of *Hanover*; but is perſuaded his Conduct is ſo well known in that reſpect, as to need no further Juſtification; but if it ſhould, he is able to produce ſuch Proofs of it, as are the beſt Authority in the World for his Vindication.

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VI. In

VI. In Anſwer to the ſixth Article he ſaith, he hath been informed that Inſtructions in Writing were given to *Milford Crow* Eſq; about the 7th of *March*, 1705. reciting, That her Majeſty having been inform'd that the People of *Catalonia* were inclined to caſt off the French Yoke, and return to the Obedience of the Houſe of *Auſtria*, and that her Majeſty deſiring to improve that Diſpoſition in them, made choice of the ſaid Mr. *Crow* to treat with the *Catalans* (or any other People of *Spain*) on that Subject; and that he was impower'd to give them Aſſurances of her Majeſty's utmoſt Endeavours, to procure the Eſtabliſhment of ſuch Rights and Immunities as they formerly enjoy'd under the Houſe of *Auſtria*; and that Inſtructions were alſo given to the Earl of *Peterborough* and Sir *Cloudſley Shovel*, and a Manifeſto publiſh'd to the Effect in the ſaid Article ſet forth, but not by the Earl's Advice or Privity: And he believes it may be true, that Part of the Nobility, Clergy, and Inhabitants of *Catalonia* and *Majorca*, did afterwards acknowledge King *Charles* for their Sovereign, and join their Arms with her Majeſty and her Allies againſt the preſent King of *Spain*; but what Motives induc'd them thereto, he doth not know: He acknowledges alſo, that for ſome Time the Arms of the Allies in *Spain* were attended with great Succeſs, in which the Bravery of the *Catalans* appear'd, and the Confederates twice enter'd the Capital City of the Kingdom; by which ſignal Conqueſts, and the great Supplies that had been granted by the Parliament of *England* for their Aſſiſtance, that People were under the higheſt Obligations of Gratitude to her Majeſty; but the Advantages of thoſe Succeſſes being loſt, her Majeſty found the Burthen of that War very heavy on her Subjects, the Conqueſt of *Spain* for the preſent Emperor impracticable, and after the Acceſſion of the Empire, and Deſcent of the hereditary Countries to him, eſteem'd inconſiſtent with the Intereſt of many of the Allies; and therefore thought it neceſſary for the Good of her People, and the Tranquility of *Europe*, to enter into Negotiations for a general Peace: But he denies he ever conſpir'd to ſubject the *Spaniſh* Monarchy to the Houſe of *Bourbon*, or the Deſtruction of the *Catalans*, or adviſ'd that the Lord *Lexington* ſhould acknow-

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acknowledge the Duke of *Anjou* King of *Spain*, before any Negotiation of Peace was ſet on Foot in Form of Law. On the contrary it will appear, that her Majeſty uſed her beſt Endeavours for obtaining the Liberties of the *Catalans*; and that the Lord *Lexington* was directed to inſiſt thereon peremptorily and abſolutely; nor were any Orders ever ſent him to recede from that Demand; nor did he deſiſt from making the utmoſt Efforts for obtaining them. And if from any Meaſures of the *Catalans*, or of his Imperial Majeſty, or from any other Cauſe, her Majeſty's Endeavours had not their full Effect, he conceives it could not be imputed to any Neglect in her Majeſty, or Want of Duty in the Earl. He believes the Emperor did enter into a Convention for the Evacuation of *Catalonia*; and that her Majeſty was prevail'd on, out of her Affection to the Emperor, to become one of the Guarantees thereof; but denies his Imperial Majeſty was neceſſitated by any Practices of the Earl to make ſuch Convention, and knows not why his Imperial Majeſty, whom it moſt concern'd, omitted in that Convention to make expreſs and poſitive Stipulations for the Liberties of the *Catalans*. If it proceeded from any Dependance on her Majeſty to interpoſe in their Behalf, he is confident her Majeſty's beſt Offices were employ'd; and repeated Inſtances were made by her Miniſters, in the moſt pathetick Manner, to obtain for them the Privileges they deſir'd; and that her Majeſty actually did obtain for them a perpetual Amneſty and Oblivion of all that was done in the late War, the full Poſſeſſion of all their Eſtates and Honours, and a farther Grant of all the Privileges, which the Inhabitants of both *Caſtiles* (who of all the *Spaniards* are moſt favour'd by the Crown) enjoy'd, or might enjoy, whereby the *Catalans*, if they obtain'd not all the antient Privileges they pretended to receive, had, however, in lieu of them, the Advantage of trading directly to the *Weſt Indies*, and other Priviledges, to which they were not before entitled. And 'tis probable the Queen had obtain'd for them the antient Priviledges and Liberties in the largeſt Extent, if they had waited the Event of her Interpoſitions in their Favour, and not determined to carry on the War by themſelves againſt King *Philip* after the Emperor had ſign'd the Convention for evacuating their Country,

try; which incens'd the King of *Spain* to the laſt Degree, and was look'd upon by him as the moſt obſtinate Rebellion: He believes her Majeſty might think herſelf oblig'd, by being Guarrantee to the ſaid Convention, to ſend Sir *James Wiſhart* into the Mediterranean with a Squadron of Men of War; but knows not what Orders or Inſtructions were given him; and the Earl conceives he cannot in Juſtice be charg'd with any Conſequences from the *Catalans* Refuſal to comply with the King of *Spain* upon the Terms her Majeſty had obtain'd for them.

And he ſays, he is not guilty of all or any of the Matters contain'd in the ſaid Articles, in Manner and Form as they are therein charg'd againſt him; and hopes their Lordſhips will impute any Defects there may be in his Anſwer to the ill State of Health he has long labour'd under, and be induc'd to make all further due Allowances in his Favour, from the following Conſiderations.

The Concluſion of the Earl's Anſwer.

Moſt of the Articles relate to the Negotiations of Peace concluded at *Utrecht*, and he muſt be under great Difficulties in giving a particular Account of ſuch a Variety of Facts as are contain'd therein: That ſeveral of theſe Facts concern Tranſactions with Foreign Miniſters, who cannot be produc'd as Witneſſes for him: That where the Intereſts of ſeveral Parties ſeparate from, and perhaps contrary to each other, are to be adjuſted, great Secrecy and Addreſs are requir'd; and in Treaties between Enemies, ſuch Terms are often propos'd and Arguments us'd, as carry a different Appearance from the real Intentions of thoſe that treat; ſo that it muſt be very difficult to ſet every Thing in a true Light that paſs'd at thoſe Negotiations, eſpecially ſince the Account of thoſe Tranſactions, and the Reaſons on which they are founded, cannot be clear'd but by inſpecting the entire Series of Letters and Papers which paſs'd during the Continuance of thoſe Tranſactions, which are in the Poſſeſſion of the Houſe of Commons, nor could he be indulg'd with Copies of thoſe Papers when he apply'd for them.

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That the Houſe of Commons, by being poſſeſs'd of thoſe Papers, have a fuller View of all the ſecret Steps of that Negotiation, than was ever imparted to a Houſe of Parliament, and all poſſible

Advantage

Advantage in forming the Charge againſt him; whereas the Earl, wanting the Aſſiſtance of thoſe Papers, is under inconceivable Diſadvantages in making his Defence, and hopes their Lordſhips will not expect any ſuch Proofs of his Innocence as can only be drawn from a Peruſal of them.

He ſubmits it alſo, whether in a Negociation, where the Advice of all thoſe in high Truſt about her Majeſty was requir'd and taken, he can with any Colour of Equity be made anſwerable for adviſing and conducting the whole.

He obſerves further, That every Thing with which he is charg'd was done in the Reign of a Princeſs now deceas'd, who having a perfect Knowledge of the State of Affairs at that Time, cou'd have been the only competent Judge whether ſhe was fraudulently dealt with, lead into ill Meaſures which ſhe did not direct or approve, or made an Inſtrument of ſacrificing her Kingdoms to the Enemy. It was with great Grief he obſerv'd ſuch Things ſuggeſted, as ſeem'd to reflect on the Character of that excellent Queen; but he aſſures their Lordſhips, that every Thing relating to the Peace was communicated to her late Majeſty, and maturely conſidered by her before any Thing was determin'd thereupon; nor was any Step taken but in Purſuance of ſuch Determination.

He juſtifies the late Queen's Conduct.

He ſaid, That the Queen had nothing more at Heart than to procure her People the Bleſſing of Peace; and when ſhe had obtain'd it, ſhe had this Satisfaction, that ſhe had taken the moſt proper Meaſures to juſtify her Conduct both to her Allies and her own Subjects: That upon a Review of her Actions it wou'd appear, and had in Part appear'd by this Anſwer, that as her Majeſty enter'd further into the War than ſhe was oblig'd by any Treaties in being at her Acceſſion, ſo ſhe contributed more Men and Money towards the carrying it on afterwards, than ſhe was engaged to provide by any ſubſequent Treaties: That her earneſt Deſires of Peace being twice fruſtrated, when ſuch Conditions might have been obtain'd as wou'd have anſwer'd all the Ends for which the War was declar'd, and our Succeſſes and Victories produc'd only an annual Increaſe of the Charge to *England*, without any further Aſſiſtance from the Allies, and theſe

Kingdoms were exhauſted to ſuch a Degree, (notwithſtanding the great Advantages obtain'd by her Arms,) that ſhe was not able to continue the War upon the Foot it then ſtood a Year longer; and her Allies refus'd to continue it upon thoſe equal Conditions they were oblig'd to by their Treaties; ſhe was conſtrain'd, in Compaſſion to her People, to hearken to the Overtures of Peace made her by *France*, without relying longer on the vain Hopes of gaining more advantageous Terms, by protracting the War a Year longer. She had carry'd it on ſome Time under that Proſpect, without reaping the Benefits propos'd, and thereby, perhaps, rais'd the Glory of her Arms; but ſhe cou'd not think this a ſufficient Recompence for the increaſing Miſeries of her People; and therefore reſolv'd to lay hold of the Opportunity that was offer'd her, of ending the War by a Safe and Honourable Peace; and thoſe who were then employ'd in her Majeſty's Councils, thought themſelves oblig'd to ſecond her good Intentions.

It was the Saying of the Duke of *Parma*, as great a General as the laſt Age produc'd, when *France* was diſtracted with Civil Wars, and in a much lower Condition than ſhe was at the Concluſion of the laſt Peace, at a Time when *Spain* was at the Height of its Glory, and the Duke at the Head of a Spaniſh Army, ſupporting one of the contending Parties, That *if* France *was to be won only by reducing its Towns, the World would be ſooner at an End than ſuch a War.* The Queen ſeem'd at that Juncture with better Reaſon to frame the like Judgment; and it was a great Inſtance of her Wiſdom to think of ſecuring a Peace, while ſhe appear'd able to carry on the War, and before the exhauſted Condition of her Kingdom, and the Impoſſibility of maintaining ſo diſproportion'd an Expence, was diſcover'd by her Enemies. And the Queen enter'd upon the Negociation with Circumſtances of great Honour to herſelf, *France* applying to her firſt, and previouſly owning her Title, and acknowledging the Proteſtant Succeſſion; two principal Grounds on which the laſt Declaration of War was built.

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And as by the Terms of this Peace all reaſonable Satisfaction and Security, due to the Allies by Treaty, were obtain'd for them, ſo larger Advantages

tages were procur'd to *Britain* in particular, than ever had been demanded before in any Treaty between this and any other Foreign State; the Kingdoms of *France* and *Spain* were effectually ſeparated, the Ballance of Power upon a better Foot than it had been for an hundred Years paſs'd, the Proteſtant Succeſſion ſecured, and our Trade and Manufactures in a flouriſhing Condition.

And as the Terms of Peace were advantageous to *Great Britain*, it was approved by both Houſes of Parliament; ſolemn Thanks were render'd to God for it here and in the United Provinces; and her Majeſty receiv'd on this Occaſion the hearty Congratulations of her People from all Parts of her Dominions.

This being a true Repreſentation of the Caſe, the Earl does not ſee how he, or any others in her Majeſty's Service, can juſtly be charged with betraying the Intereſts of their Country, or the Allies, by negociating that Peace ſo acceptable and advantageous to theſe Kingdoms; and if the Peace itſelf be not condemn'd, and it be not charg'd as a Crime that he advis'd her Majeſty to conclude that Peace, he conceives it an extraordinary Hardſhip that rough Draughts and Eſſays towards a Peace, leading to an End that was juſt and profitable, ſhou'd be brought to form ſo many diſtinct Heads of Accuſation againſt him: For ſuppoſe any improper Steps had been taken, which he does not admit, yet if Things were at laſt conducted to a right Iſſue, and ended in an Honourable and Advantageous Peace, there can be no juſt Ground to find fault with the Meaſures us'd to compaſs it, becauſe they ſeem'd before the Accompliſhment to have a different Tendency, eſpecially if it were conſider'd, that ſcarce any Peace had been made by a Confederacy, where leſs Reaſon had been given to complain among the ſeveral Parties: And therefore he hop'd that no Steps taken for obtaining a Peace, approv'd by former Parliaments, wou'd be accounted criminal by any ſucceeding Parliament, unleſs it appear'd that thoſe Steps were taken contrary to the Queen's Orders, or upon corrupt Views of private Advantage.

And as a farther Proof that the Queen's Miniſters acted with upright Intentions, and were not conſcious of any Failure in their Duty, the Earl obſerves

they never attempted to cover their Actions from publick Cenſure by any Pardon or Indemnity.

Vol. vi. p. 146. He obſerves further, That in the Articles which regard the Negotiations of Peace, the Charge is not founded on the Breach of the Laws of *England*, but chiefly on the ſuppoſed Infraction of certain Treaties with foreign Princes and States; and he conceives that ſuch Infractions being cognizable by the Laws of Nations only, and not by thoſe of the Realm, are not wont to be examin'd here at Home, and proſecuted as criminal, but upon the Complaint of the Prince or State pretending to be injured; but he does not find any ſuch Complaints have been made ſince the Peace by any of the Powers concerned. He ſubmits it to their Lordſhips, whether the Emperor having had all reaſonable Satisfaction made him for his Pretenſions to the *Spaniſh* Monarchy, according to the Terms of the Grand Alliance, could have any juſt Reaſon to complain of the Queen's Miniſters, or thoſe of her Allies, for concluding a Peace without inſiſting on his Account on impoſſible Conditions, eſpecially when no Offers were made to reimburſe her Majeſty any Part of thoſe vaſt Sums ſhe had already expended in Support of his Pretenſions; whilſt he fail'd of ſupplying his Quota almoſt in every Part of the War, notwithſtanding the great Acquiſitions that had been made for him. But if the Emperor, or any other of the Allies, had any juſt Ground of Complaint, ſtill he inſiſts it ought to have been ſignified to the Queen; who, if ſhe had found any of her Servants blameable, might have puniſhed them as their Offences deſerved: But nothing of this kind appearing, he ſubmits it, whether the Silence of thoſe Powers doth not carry in it a ſtrong Preſumption, either that they had no real Ground of Complaint, or did not look upon the Queen's Miniſters to be blameable on that Account: And therefore begs Leave to expreſs his Concern, that he ſhould be charged as a Criminal by the Laws for ſuppoſed Breaches of Treaties with Foreign States, which never were complained of by thoſe States themſelves during the Life of her Majeſty.

He obſerves alſo, That wherever he is charged with carrying on a private Negotiation, it is with regard only to the States General, though all the other Allies

lies had a like Right to a Communication of Councils, and her Majeſty was under no Obligation to act more in Concert with them than with any other.

He allows it to be reaſonable, indeed, that the Queen ſhould act in a cloſer Conjunction with *Holland*, than with the other Allies; becauſe next to *Britain*, ſhe bore the greateſt Share in the Charge of the War: But then it muſt be allow'd that the States being more intereſted in the Succeſs of the War than *England*, it was reaſonable the Queen ſhould take Care of the Intereſt of her Kingdoms ſome other Way. And ſince the Advantages ſhe demanded from the Enemy were ſuch as ſhe might obtain without any Prejudice to the States, it was as lawful for her to negotiate this Matter without communicating it originally to them, as it was for her and the States to concert their mutual Intereſts together without the Participation of the other Allies; which being done without a Deſign to defeat the main Ends of the Alliance, was never complained of by any of the Confederates.

And the States were ſo far from proteſting againſt her Majeſty's Conduct, in concerting previouſly with *France* the particular Intereſt of her own Kingdoms, that they offered ſeveral Times to lead the Way in the moſt difficult Part of the Treaty, if they might have had a Share in the *Aſſiento* Contract, and the Trade to the *Spaniſh Weſt Indies*.

The Earl concludes with Proteſtations of his Innocence: He ſays, that in all Affairs of State he had the Honour to be employed by her late Majeſty, he ever acted according to the beſt of his Judgment, with ſincere Intentions to ſerve the Publick, and without any View to his own private Advantage: That he never ſought or deſired any of the great Employments he held, but came into them by her Majeſty's ſpecial Command, and had ſerved her with the utmoſt Zeal and Faithfulneſs; and as he continued in thoſe Stations many Years, it was with Wonder and Pleaſure he obſerved her Majeſty's whole Thoughts and Time divided between her Duty to God and her Love to her People, whoſe Proſperity ſhe preferred to her own Eaſe, and often hazarded her Health and Life to procure it: That he found it the moſt effectual Way to recommend himſelf to her good Opinion, to act upon the ſame Principles of Juſtice and Love

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to his Country that ſhe did; and as ſhe abhorred the Thoughts of every Thing that might be burthenſome or injurious to her People, ſo ſhe expreſſed herſelf with the greateſt Satisfaction and Delight, when ſhe reflected on the Advantages ſhe had obtained for her own Subjects, and the Quiet and Repoſe ſhe had gained for *Europe* by that honourable Peace; for which as the preſent Age bleſſed her, future Generations would adore her Memory.

To the Earl's Anſwer the Commons reply'd,

The Commons Reply.

THAT it was with Aſtoniſhment they obſerved, that the Earl, inſtead of giving a pertinent Anſwer to the heavy Charge brought againſt him, had preſum'd to deny his adviſing and being concern'd in any Matters of State charged on him in the Articles, though confeſſed to be done at a Time when he was notoriouſly Prime Miniſter; and had added a malicious Libel, laying the whole Blame upon the late Queen, whom he had impoſed upon, intending thereby to reflect on the Honour and Juſtice of the Houſe of Commons, and caſt an *Odium* on their Proceedings, as tending to aſperſe her Majeſty's Memory: But if it was poſſible to add to the Load of Guilt he lay under, this baſe Attempt to defame his Royal Miſtreſs muſt bring ſuch a Weight of Infamy upon him, as might juſtly provoke the Commons to demand immediate Juſtice, were they not ſenſible that the Treaſons and other Crimes he ſtood impeached of, and the Neceſſity of bringing him to ſpeedy and exemplary Juſtice, required that all Occaſions of Delay ſhould be avoided: And not doubting that the Lords would in due Time vindicate the Honour of the late Queen, and of the Commons, they did aver their Charge againſt the ſaid Earl to be true; and that he was guilty of all and ſingular the ſaid Articles in ſuch Manner as he ſtood impeached, and were ready to prove their Charge againſt him.

After the reading of the Articles, Anſwer, and Reply, the Lord High Steward addreſſed himſelf to the Earl of *Oxford*, the Priſoner at the Bar. He ſaid,

Earl *Cowper*, Lord High Steward's Speech to the Earl.

IT was uſual to ſay ſomething to Perſons in his Lordſhip's Condition, partly to exhort them to a reaſon-

reaſonable Confidence in the Honour and Juſtice of their Judges, their Peers, and partly by Way of Direction to aſſiſt them in their Conduct in the Courſe of the Trial; but conſidering the great Offices his Lordſhip had born in the State, and his long Experience in Parliamentary Proceedings, it was unneceſſary to ſay any Thing to him on that Subject.

He proceeded, therefore, barely to acquaint him with the Orders of the Houſe of Lords, in relation to the Tryal.

1. That his Lordſhip, and all other Perſons, muſt addreſs their Speeches to the Lords in general, and not to any Lord in particular. Vol. vi. p. 148.

2. That his Lordſhip's Counſel might be preſent, in order to be heard to any Point of Law that ſhould ariſe on either of the Articles for High Treaſon; and that he might make his full Defence by Counſel on the Articles for High Crimes and Miſdemeanors, as well on Matters of Fact as of Law.

3. That his Witneſſes were to be examined upon Oath, as well to the Articles of High Treaſon, as thoſe for High Crimes and Miſdemeanors.

Then the Lord High Steward leaving his Chair, and going down to the Table for the Advantage of Hearing what was ſaid at the Bar, he directed the Commons to proceed.

Mr. *Hampden*, one of the Managers, being appointed to open the Articles, ſaid,

Mr. *Hampden*, a Manager, opens the Articles.

THE Commons of *Great Britain*, out of indiſpenſible Duty to their Country, and Zeal for the Preſervation of the Liberties of *Europe*, had brought to their Lordſhips Bar *Robert* Earl of *Oxford*, late High Treaſurer, and a Privy Counſellor of this Kingdom, charged with the higheſt Crimes and Miſdemeanors againſt the Perſon, Crown, and Dignity of his Sovereign, the Peace and Intereſt of the Kingdom, and with the Breach of the ſeveral Truſts repoſed in him. [*Here he gave a ſhort Abſtract of the ſeveral Articles already recited, and then goes on.*] Thus your Lordſhips have a View of the Guilt in which the Treaſons and other Crimes committed by the Priſoner have involved him: They had ſeen him abuſing and betraying the Honour of his Vol. vi. p. 149.

Royal Miſtreſs, into whoſe Favour he had inſinuated himſelf, for the moſt deſtructive and wicked Purpoſes; they had found him dividing and weakening the Allies, betraying their Counſels, traiterouſly giving up their Fortreſſes, their moſt flouriſhing and wealthy Countries to the Common Enemy in Time of open War, and contriving and effecting the Diſſolution of the moſt glorious Confederacy that was ever formed in Defence of the Proteſtant Intereſt, and the Liberties of *Europe*; they had found him attempting to deprive theſe Kingdoms of the moſt auſpicious Government of his preſent Majeſty, the greateſt and beſt of Princes, and to defeat us of our happy Proſpect of laſting Felicities in a long Succeſſion of Proteſtant Princes in the Royal Line; on the Continuance of which Succeſſion, next under God, all that was dear and valuable to us depended.

Vol. vi. p. 150.

The Commons did juſtly reſent and deteſt the Reproach brought upon the Faith and Honour of the Nation by that great Evil Miniſter at their Bar; but promiſed themſelves their Lordſhips would ever be a Terror to all Evil Miniſters, how great ſoever, and not fail to do Juſtice to their injured Country upon all perfidious Counſellors, who lay in wait to deſtroy their Religion, Laws, and Liberties.

Sir *Joſeph Jekyll.*

Sir *Joſeph Jekyll*, another of the Managers, beginning to open that Part of the Charge contained in the firſt Article, the Lord *Harcourt* moved to adjourn to the Chamber of Parliament; and the Lords adjourned accordingly; and the following Queſtion was put, *viz.*

The Lords adjourn to their Houſe.

That the Commons be not admitted to proceed, in order to make good the Articles againſt Robert *Earl of* Oxford *and Earl* Mortimer *for High Crimes and Miſdemeanors, till Judgment be firſt given on the Articles of High Treaſon.*

Which being reſolv'd in the Affirmative, the Lords returned to *Weſtminſter-Hall*; and the Lord High Steward acquainted the Managers for the Commons with the ſaid Reſolution.

Sir *William Thompſon* thereupon ſaid,

Sir *William Thompſon*, a Manager for the Commons.

THAT they conceived it to be their undoubted Right to proceed in their own Method; and that this Reſolution might be of ſuch fatal Conſequence

quence to the Rights and Priviledges of the Commons, that they could proceed no further without reſorting to the Houſe for their Direction.

[*Whereupon the Lords adjourned to the Chamber of Parliament, and the Lord the Priſoner was remanded to the Tower, and ordered to be brought to the Bar again the next Morning.*]

Tueſday, June 25. 1717.

The Lords being met in the Chamber of Parliament, a Meſſage was ſent to the Commons to acquaint them, that their Lordſhips were about to go to *Weſtminſter-Hall*, to proceed farther on the Trial of the Earl; but the Commons ſending them a Meſſage, that they deſired Time to ſearch Precedents, the Lords agreed not to proceed in the ſaid Trial till the Thurſday following.

Thurſday, June 27. 1717.

The Houſe of Lords being met, received a Meſſage from the Commons, deſiring a Conference. Whereupon a Conference was appointed immediately in the Painted Chamber, and Managers named by the Lords. At this Conference the Managers for the Commons delivered a Paper to their Lordſhips of the Tenour following, *viz.*

The Commons deſire a Conference with the Lords, which is agreed to. Vol. vi. p. 151.

THE Commons having taken into their Conſideration your Lordſhips Reſolution, communicated to their Managers, relating to the Proceedings on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, and being deſirous, as far as in them lies, to maintain a good Correſpondence with your Lordſhips, have deſired this Conference, and have commanded us to acquaint your Lordſhips, That they conceive it to be the undoubted Right of the Commons to impeach a Peer either for High Treaſon, or for High Crimes and Miſdemeanors, or, if they ſee Occaſion, to mix both the one and the other in the ſame Accuſation.

The Impeachment preferred againſt *Robert* Earl of *Oxford* and Earl *Mortimer* is one continued Accuſation, conſiſting of High Crimes and Miſdemeanors;

nors, and alſo of Charges of High Treaſon: The Facts on which the Articles preceeding thoſe of High Treaſon are grounded, are laid together in Order of Time, and follow one another ſucceſſively in the Manner they were committed.

As the Commons thought this the moſt natural Method for exhibiting the ſeveral Articles againſt the ſaid Earl, they were all of Opinion, that they ſhould proceed in the Proof of theſe ſeveral Facts after the ſame Method, ſince it is manifeſt that in laying open the Courſe of ſuch a wicked Adminiſtration, the preceeding Parts of it give Light to thoſe which follow; and that the Proof of ſeveral Articles of the High Crimes and Miſdemeanors would naturally lead to the Proof of thoſe of High Treaſon.

Your Lordſhips received theſe ſeveral Articles of Impeachment without making any Exception againſt the Form in which they were exhibited; the ſaid Earl made his Anſwer to them in the ſame Order, and has no where inſiſted to be tried in any other Method; ſo that the Commons are ſurpriz'd to find a Stop put to their Proſecution by an Objection which has never been ſtarted by the ſaid Earl, and which your Lordſhips had given them ſo little Reaſon to expect.

To this muſt be added, that as the Commons only are Maſters of the Evidence; and as upon that Account they are beſt able to determine in what Method to proceed for the Advantage of the Proſecution, in the Event of which all the Commons of *Great Britain* are ſo highly concerned.

To which they further add, That they ſee no Reaſon but that your Lordſhips may as well invert the whole Order of the Articles, as preſcribe to the Commons, thoſe particular Articles on which they are firſt to proceed, which will neceſſarily produce ſuch a Confuſion both in the Facts and Evidence, as is by no Means conſiſtent with that Clearneſs and Perſpicuity in which the Commons think this Affair ought to appear.

The Commons upon examining Precedents, do find divers Precedents of Impeachments for High Treaſon and other High Crimes and Miſdemeanors in the ſame Accuſation; and do not find that the Lords ever objected to ſuch Proceeding, or ever gave Judgment upon any particular Article of an Impeachment

Impeachment, before the Commons had gone through and concluded their Evidence upon all the Articles, or ſo many of them as they thought fit; and the Commons are at a Loſs to conceive what Arguments or Precedents can be brought to ſupport the Reſolution of your Lordſhips, to give Judgment upon one Part of the ſame Accuſation, reſerving the other Part for a ſubſequent Trial, as they are to know what your Lordſhips mean by admitting the Commons to proceed upon the Articles for High Crimes and Miſdemeanors after the Judgment is given upon the Articles for High Treaſon, ſuppoſing the Judgment proper for High Treaſon ſhould be given againſt the ſaid Earl.

The Commons refuſe to alter their Method of Proceeding.

For theſe Reaſons the Commons aſſert it as their undoubted Right to proceed on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, after the Method in which their Managers were proceeding when interrupted by your Lordſhips Reſolution.

Their Lordſhips, however, reſolv'd to inſiſt on their former Reſolution, and order'd a Committee to prepare Reaſons to be offer'd at a Conference in Maintenance of their ſaid Reſolution.

Friday, June 28. 1717.

The Lords being met in their Houſe, the Reaſons the Committee had drawn up for inſiſting on their former Reſolution were read, and are as follow; Vol. vi. p. 152.

The Lord's Reaſons for perſiſting in their Reſolution.

THEIR Lordſhips, in order to preſerve a good Correſpondence with the Houſe of Commons, (which they ſhall always endeavour to do as far as lies in their Power,) have deſired this Conference upon the Subject-Matter of the laſt Conference, and have directed us to acquaint you, That their Lordſhips judge it a Right inherent in every Court of Juſtice to order and direct ſuch Methods of Proceedings as ſuch Courts ſhall think fit to be obſerved in all Cauſes depending before them which can have no Influence to the Prejudice of Juſtice, and where ſuch Methods of Proceedings are not otherwiſe ſettled by any poſitive Rule. The Power of Judicature on all Impeachments being a Right unqueſtionably inherent in their Lordſhips, and it not being determined by any poſitive

poſitive Rule, whether the Houſe of Commons may proceed to make good the ſeveral Articles exhibited for Miſdemeanors, in ſuch Order as they ſhall think fit, before they proceed to make good the Articles exhibited for High Treaſon; and there being no Precedent, where the Commons upon Trial of any ſuch Impeachment attempted to proceed in the firſt Place to make good any of the Articles contain'd in ſuch Impeachment for High Crimes and Miſdemeanors, their Lordſhips conſidering the Nature of the Impeachment now depending before them, and the Method wherein the Managers for the Houſe of Commons were beginning to proceed upon the Trial, to make good the firſt Article thereof, which is a Charge for High Crimes and Miſdemeanors only, and alſo conſidering the very different Methods of Proceedings on an Impeachment of a Peer for High Treaſon, as well before, as upon the Trial thereof, and the Circumſtances attending ſuch a Trial, from the Proceedings on an Impeachment of a Peer for High Crimes and Miſdemeanors, and the known Circumſtances attending ſuch a Trial, thought themſelves oblig'd to come to the Reſolution communicated to the Commons on the 24th inſtant, as well for the doing Juſtice in the Caſe depending before them, as for the preventing a new Precedent to be made on this Trial; in conſequence whereof, a new and unjuſtifiable Form of Proceeding againſt a Peer, upon an Impeachment for High Treaſon and High Crimes might be introduc'd at his Trial upon thoſe Articles, in which he is charg'd for High Crimes and Miſdemeanors only, to the Prejudice of the Peerage of *Great Britain* in all Time to come, *viz.* the trying a Peer on Articles for High Crimes and Miſdemeanors without the Bar, the detaining in Cuſtody a Peer ſo accus'd, and repeated Commitments of him to the *Tower*, during the Time of ſuch Trial, and ſubjecting a Peer to as ignominious Circumſtances on his Trial on Articles for Miſdemeanors, as if he were then on his Trial on Articles for High Treaſon; whereas a Peer on his Trial on Articles for Miſdemeanors only, ought not to be depriv'd of his Liberty, nor ſequeſter'd from Parliament, and is entitled to the Privilege of ſitting within the Bar during the whole Time of his Trial. In all which Particulars the known Rule of Proceedings

ings in ſuch Caſes may be evaded, ſhould a Peer be brought to his Trial on ſeveral Articles exhibited againſt him on High Crimes and Miſdemeanors, and for High Treaſon mix'd together, and the Commons be admitted to proceed, in order to make good the Articles for High Crimes and Miſdemeanors, before Judgment be given upon the Articles for High Treaſon. Their Lordſhips have fully conſider'd the Matters offer'd to them by the Houſe of Commons at the laſt Conference, relating to the Proceedings againſt *Robert* Earl of *Oxford* and Earl *Mortimer*; and their Lordſhips are fully ſatisfied, that the Reſolution they have taken and communicated to the Commons on the 24th inſtant is juſt and reaſonable; and that the Houſe of Commons are not put under any real Inconvenience thereby, in carrying on their preſent Proſecution. Their Lordſhips have commanded us to let you know, that they do inſiſt on their ſaid Reſolution, *viz.* That the Commons be not admitted to proceed in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High Crimes and Miſdemeanors, till Judgment be firſt given upon the Articles for High Treaſon.

They inſiſt, that the Commons ſhall not proceed on the Articles for High Crimes, till the Earl is try'd for High Treaſon.

The ſaid Reaſons having been deliver'd to the Managers for the Commons, at a Conference the ſame Day, the Earl of *Oxford* was order'd to be brought to his Trial in *Weſtminſter-Hall* again the next Day.

Saturday, June 29. 1717.

The Lords being met in their Houſe, receiv'd a Meſſage from the Commons, to deſire a free Conference upon the Subject-Matter of the laſt Conference. Whereupon the Lords reſolv'd, That the Subject-Matter of the laſt Conference, concerning a Point of Judicature, determin'd by their Lordſhips after the Trial began, their Lordſhips did not think fit to give a free Conference on the Subject-Matter of the laſt Conference; and ſent a Meſſage to the Commons, to acquaint them with this Reſolution. Vol. vi. p. 153.

Munday,

Munday, July 1. 1717.

The Lords being met in their Houſe, receiv'd a Meſſage from the Commons, deſiring a Conference on their Lordſhips laſt Meſſage; to which the Houſe agreed. And at this Conference the Managers for the Commons deliver'd a Paper to their Lordſhips of the following Tenor, *viz.*

THE Commons having taken into Conſideration your Lordſhips Meſſage, *viz. That your Lordſhips did not think fit to give a free Conference on the Subject-Matter of the laſt Conference*, as was deſir'd by the Commons; and they being ſtill deſirous, to the utmoſt of their Power, to preſerve a good Correſpondence with your Lordſhips, have asked this Conference, and have commanded us to acquaint your Lordſhips, That they are very much ſurpriz'd to find your Lordſhips deny a free Conference, after your Lordſhips had already agreed to a Conference deſir'd by the Commons on the ſaid Subject-Matter, and after your Lordſhips have on your Parts alſo deſir'd a Conference on the ſame Subject.

That free Conferences are the moſt antient and eſtabliſh'd Methods for adjuſting the Differences that have at any Time ariſen between the two Houſes; and, as the Commons conceive, is the only Method to preſerve a good Correſpondence between them on ſuch Occaſions, which at this Time is of the higheſt Importance, becauſe a Miſunderſtanding on this Account, would tend to defeat the Trial of the Impeachment of the Commons.

Vol. vi. p. 154.

That the Commons conceive clearly, that the Subject-Matter of the laſt Conference is not a Point of Judicature, but a Point relating only to the Proſecution of the Commons, it having ariſen before any Matter of Judgment had come before your Lordſhips on the Trial.

For which Reaſons the Commons conceive, that your Lordſhips ought not to have denied them a free Conference upon the Subject-Matter of the laſt Conference.

The Lords, notwithſtanding, perſiſted in their Reſolution of denying a Conference on that Matter, and communicated this Reſolution to the Managers of

of the Commons at another Conference; and the ſame Day they ſent a Meſſage to the Commons, That they intended preſently to proceed further in the Trial of *Robert* Earl of *Oxford* in *Weſtminſter-Hall*.

The Lords afterwards coming down to *Weſtminſter-Hall*, the Priſoner was brought to the Bar; and the Commons not being preſent, Proclamation was made, That whereas *Robert* Earl of *Oxford* and *Mortimer* ſtood impeach'd of High Treaſon, and other High Crimes and Miſdemeanors, by the Houſe of Commons, in the Name of themſelves and of all the Commons in *Great Britain*, all Perſons concerned were to take notice that he now ſtood upon his Trial, and they might then come forth in order to make good their ſaid Charge.

The Lords proceed in the Trial in the Abſence of the Commons.

[*Here the Lord* Guilford *moved to adjourn to the Houſe above, and the Lords adjourn'd accordingly.*]

Then the Houſe being reſum'd, it was propos'd, *That* Robert *Earl of* Oxford *and Earl* Mortimer *be acquitted of the Articles of Impeachment, exhibited againſt him by the Houſe of Commons for High Treaſon and other High Crimes and Miſdemeanors, and of all Things therein contained; and that the ſaid Impeachment be diſmiſs'd.* And it was reſolv'd, that the Queſtion thus ſtated ſhou'd be the Queſtion put in *Weſtminſter-Hall*. Vol. vi. p. 155.

Then the Lords being return'd to the Hall, and Proclamation made for Silence as uſual, the Lord High Steward put the Queſtion in the Words above preſcrib'd; and addreſſing himſelf afterwards to the youngeſt Baron he ſaid, *My Lord, your Lordſhip has heard the Queſtion ſtated, What ſays your Lordſhip? Is your Lordſhip Content, or not Content?* To which he anſwer'd CONTENT; and after him every Lord, when the Queſtion was put, anſwer'd CONTENT, in their Order, without one diſſenting Voice.

L. H. Steward. My Lords, *Robert* Earl of *Oxford* and Earl *Mortimer* is acquitted of the High Treaſon and other High Crimes and Miſdemeanors, wherewith he ſtands charged, by the unanimous Vote of all your Lordſhips here preſent. Vol. vi. p. 156.

The Earl is acquitted.

[*Then*

[*Then the Earl of* Oxford *being brought to the Bar, the Lord High Steward pronounc'd the following Judgment.*]

L. H. Steward. It is Conſider'd, Order'd, and Adjudg'd, by the Lords Spiritual and Temporal in Parliament Aſſembled, that *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall be, and is hereby acquitted of the Articles of Impeachment, exhibited againſt him by the Houſe of Commons, for High Treaſon and other High Crimes and Miſdemeanors, and of all Things therein contain'd; and that the ſaid Impeachment ſhall be, and is hereby diſmiſs'd.

L. H. Steward. Lieutenant of the *Tower* of *London*, You are now to diſcharge your Priſoner.

[*Then the Lord High Steward broke his Staff, and the Earl was immediately diſcharged at the Bar, the Lords adjourning to their Houſe above.*]

The Houſe of Commons afterwards addreſs'd his Majeſty to except the Earl of *Oxford* out of the Act of Grace that was paſſing this Seſſions, in which they were humour'd by the Court; but the Earl died in Peace in a good old Age, without any farther Proſecution. His Enemies had diſpoſſeſs'd him and his Friends of their Poſts in the Adminiſtration, by ſuch Suggeſtions as we find in theſe Articles, and eſtabliſhed themſelves: After which, their Zeal for the Honour of the Nation and the Intereſt of *Europe* ſeem'd viſibly to decline; they enter'd into the ſtricteſt Friendſhip with that very Nation, they affected ſo much to dread but a very little before; the French are become our very good Allies, and we are ready to refer our Differences with other Powers to their Umpirage.

The

The TRIALS *of Major* STEDE BONNET, *and Thirty three others, at the Court of Vice-Admiralty, at* Charles-Town *in* South Carolina, *for Piracy, the* 30*th of* October, &c. 5 Geo. I. 1718.

Vol. vi. p. 156.

THE Court conſiſted of *Nicholas Trott* Eſq; Judge of the Vice-Admiralty, and Chief Juſtice of the Province of *South Carolina*, and *George Logan* Eſq; *Alexander Paris* Eſq; *Philip Dawes* Eſq; *George Chicken* Eſq; *Benjamin de la Conſeiller* Eſq; *Samuel Dean* Eſq; *Edward Brailsford* Gent. *John Croft* Gent. Captain *Arthur Loan*, and Captain *John Watkinſſon* his Aſſociates; who being aſſembled on the 28th of *October*, and the King's Commiſſion to *Nicholas Trott* Eſq; Chief Juſtice, and the Commiſſion from the Lord Palatine, and the reſt of the Lords Proprietors, for holding the Court of Admiralty Seſſions read, the Grand-Jury were call'd over, and ſworn; to whom the Chief Juſtice gave a very long and learned Charge, at leaſt in the Opinion of his *American* Audience; but becauſe that Part of it, wherein he enlarges on the Laws againſt Piracy, may not be altogether ſo inſtructive and entertaining to the *Engliſh* Reader as it might be to the People of *Carolina*, I ſhall omit the Learned Part of the Charge, and take notice only of what is Hiſtorical, and may conduce to let us into a State of the Caſe.

The Court of Vice Admiralty.

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He obſerves that the Inhabitants of that Province had of late felt the great Miſchiefs of Piracy; That an infamous Pirate had the Aſſurance to lie at the Bar in ſight of *Charles-Town*, their Capital, where he rifled ſeveral of their Ships, inward and outward bound, and then ſent in his inſolent Demands to them for ſuch Things as he wanted, with Threats of murdering their People he had on Board him, if his Demands were not complied with; ſo that he did in a Manner put the Province under Contribution;

Vol. vi. p. 159.

The Chief Juſtices Charge to the Grand-Jury.

and the Succeſs he met with, encouraged another of thoſe Sea-Wolves to give them a Viſit, and take their Veſſels as they went in and out of the Harbour: That this had provoked the Government of *Carolina* to exert themſelves; and they had fitted out a Force under the Command of Colonel *Rhett*, who fought the Pirates, and brought them Priſoners to that Place, where they were now indicted for their many Depredations on the High Sea: But in the Engagement with theſe Enemies of Mankind, many of their People had loſt their Lives in diſcharge of their Duty to their King and Country, who fell by the Hands of theſe inhuman Wretches; which he hoped wou'd be one Inducement to them to find the Bill againſt the Priſoners.

Two Indictments found againſt the Priſoners.

The Grand Jury having found two ſeveral Indictments againſt the Priſoners, Part of them were brought to their Trials on the 30th of *October*, 1718. But Major *Stede Bonnet* having made his Eſcape out of Priſon, and not then retaken, his Crew were try'd without him; and he was aftewards try'd ſingly on the 10th of *November* following.

Vol. vi. p. 161.

The firſt Indictment ſets forth,

The firſt Indictment.

THAT *Edward Robinſon*, *Robert Tucker*, *William Scot*, &c. on the 2d Day of *Auguſt*, in the 5th Year of King *George*, by Force and Arms, upon the High Sea, in a certain Place call'd *Cape James*, alias *Cape Julopen*, about two Miles diſtant from the Shore, in the Latitude of 39, did piratically and felonioufly ſet upon, board, break, and enter a certain Merchant Sloop, called the *Francis*, *Peter Manwaring* Commander, putting the ſaid *Manwaring* and others in Corporal Fear of their Lives; and then and there did piratically and felonioufly ſteal, take, and carry away the ſaid Sloop, and alſo twenty Hogſheads, three Tierces, and three Barrels of Rum, of the Value of 263*l.* 6*s.* 8*d.* current Money of the Iſland of *Barbadoes*, twenty five Hogſheads of Moloſſes, of the Value of 138*l.* 13*s.* 8*d.* current Money of the Iſland of *Antegoa*, three Barrels and three Tierces of Sugar, valued at 33*l.* of like current Money of *Antegoa*, two Pockets of Cotton, of the Value of 50*l.* and about ſixty Weight of Indigo, Value 9*l.* one new Cable Value 50*l.* Sterling, nineteen *French* or

or *Spaniſh* Piſtols, two half Moidores of Gold, fourteen *French* Crowns, one Pair of Silver Buckles, Value 10*s.* and one Silver Watch Value 7*l.* Sterling, the Goods and Chattels of certain Perſons, to the Jurors unknown, being found in the aforeſaid Sloop, in the Cuſtody of the ſaid *Peter Manwaring* and others his Mariners, againſt the King's Peace, his Crown and Dignity, *&c.*

The Attorney-General, in opening the Indictment, obſerv'd,

THAT the Priſoners were to be try'd on the Statute of 28 *Henry* VIII. for Piracy. That this was a Crime ſo odious and horrid in all its Circumſtances, that thoſe who had treated on that Subject ſeem'd to be at a Loſs for Words and Terms to ſtamp a ſufficient Ignominy upon it, ſome ſtiling them Sea-Wolves, others Beaſts of Prey and Enemies to Mankind, with whom no Faith was to be kept; and all this gave us but a faint Reſemblance of theſe Miſcreants; for Wild Beaſts only devour others to ſatisfy their Hunger, and were never obſerv'd to prey upon their own Species; but Pirates prey'd upon all Mankind, thoſe of their own and other Nations without Diſtinction, *Turks*, *Jews*, or *Chriſtians*, were all alike to them; nor were they content to take ſuch Things as they wanted from the defenceleſs Merchant, but often threw their Goods overboard, burnt their Ships, and tortur'd and maſſacred the Owners, making that their Paſtime and Diverſion, which cou'd not be recited without the utmoſt Horror; and if a Stop was not put to their Depredations, and their Trade better protected than it had been of late, not only *Carolina*, but all the *Engliſh* Plantations in *America* would be totally ruin'd in a ſhort Time.

Rich. Allen Eſq; Attorney General of *South Carolina* opens the firſt Indictment.

Vol. vi. p. 162.

That *Jamaica* was already ruin'd by Pirates, and other Parts had ſuffer'd grievouſly: He did not know what was doing in *England*; but he muſt ſay no effectual Care had been taken to ſuppreſs the Pirates; and if a true Repreſentation of theſe Matters were laid before his Majeſty, he cou'd not but hope they ſhou'd have ſome Redreſs.

That the *Spaniards*, by breaking up the Bay of *Campeachy*, had put great Numbers of profligate

People upon a worſe Courſe of Life than they were engaged in before, and receiv'd more Damage by them now, than they had done from their cutting of Logwood before, nine Parts in ten of theſe People had turn'd Pirates, and liv'd upon the Plunder of their Merchants ever ſince: This and the great Expectations from the Wrecks on the *Bahama* Iſlands, where few had met with Succeſs, had greatly increaſed the Number of Pirates of late Years.

He had inſtanced in *Jamaica*, as a Place almoſt ruin'd by Pirates; but what a diſmal Dilemma were they themſelves reduc'd to in *May* laſt, when *Thatch* the Pirate lay off their Harbour with a Ship of forty Guns, and an hundred and forty Men, as well fitted out as any Fifth-Rate in the Navy, with three or four Pirate Sloops under his Command; who having taken Mr. *Samuel Wragg*, one of the Council of that Province, bound to *London*, and ſeveral other Veſſels going in and out of the Harbour, plunder'd them of 1500*l.* in Gold and Pieces of Eight, and afterwards ſent *Richards* and two or three other Pirates into the Town, to demand a Cheſt of Medicines of three or four hundred Pounds Value, threatning to behead *Wragg* and all the Priſoners they had on Board, if it was deny'd them; and the Pirates walk'd in the publick Streets in the Face of the People, waiting for the Governor's Anſwer; who was oblig'd to comply with them, to ſave the Lives of thoſe Gentlemen they had on Board: That ſome of the Priſoners at the Bar were then in *Thatch*'s and *Bonnet*'s Crews: That afterwards *Vaughan*, another noted Pirate, lay off their Bar, ſending in another inſolent Meſſage, which rous'd their Courage; and though they had been reduc'd very low by the Calamities of the *Indian* War and heavy Taxes, they fitted out two Sloops; and tho' *Vaughan*, having ſome Intimation of their Deſign, abandon'd their Coaſts, yet Colonel *Rhett*, who commanded in this Expedition, and the gallant Gentlemen who attended him, diſcover'd another Pirate at *Cape Fear*, which prov'd to be the *Revenge*, commanded by Major *Bonnet*; and after a ſmart Engagement, which laſted ſix Hours, forc'd the Pirates to ſurrender; but they had loſt ten or eleven of their Friends, who were kill'd on the Spot, and eighteen were wounded, of whom ſeveral died after they came on Shore:

That

That this was one of thoſe very Sloops that lay off their Harbour in *May* laſt, when they took Mr. *Wragg* Priſonner, and ſent up their inſolent Demands to the Governor: But Juſtice followed them cloſe at their Heels; for they were now brought to ſuffer in that Country they had ſo lately inſulted.

That *Bonnet*'s Eſcape out of Priſon was a great Misfortune to them, as he might revenge himſelf on the Merchants of that Province; but he hoped that great Reward of ſeven hundred Pounds, which the Government had offered for the taking of him, Vol. vi. p. 163. would have its Effect, and they ſhould ſoon ſee him apprehended.

He was ſorry to hear ſome Expreſſions drop from private Perſons in favour of the Pirates, eſpecially *Bonnet*; as, *That he was a Gentleman, a Man of Honour, a Man of Fortune, and one that had a liberal Education*; for theſe Accompliſhments were but ſo many Aggravations of his Crime: And how could a Perſon be eſteem'd a Man of Honour, who had loſt all Senſe of Humanity, and was become an Enemy to Mankind, a Robber, a Pirate, who had given himſelf up to plunder and deſtroy his Fellow-Creatures.

He had an Account in his Hand of above twenty-eight Veſſels taken by him and *Thatch* ſince *April* laſt; and how many before, no Body knew. His having an Eſtate aggravated his Offence, becauſe he was under no Temptation of taking up that wicked Courſe of Life: His Education was a farther Aggravation; for this generally ſoftened Mens Manners, and corrected a ſavage bruti{ſ}h Temper: But when the Endowments of Nature, Education, or Fortune were perverted to vile Purpoſes, ſuch Perſons generally became the worſt of Men, and moſt dangerous to the Commonwealth, as was evident from this Inſtance.

That moſt of the Priſoners were old Offenders, had ſerved under *Thatch* and *Bonnet* in taking the twenty-eight Veſſels above mentioned, and were with them when they lay off the Harbour in *May* laſt: Theſe were Part of the Men that ſent in that inſulting Meſſage, and who killed and wounded ſo many brave Men in the obſtinate Defence they made againſt Colonel *Rhett*; ſo that there was ſcarce any Room left for Pity or Compaſſion.

Vol. vi. p. 164. [*Ignatius Pell, the Boatſwain of the Pirate, ſworn.*]

The Evidence againſt the Priſoners.

He depoſed, That he was Boatſwain of the *Revenge*, Major *Bonnet*'s Sloop; that he and all the Priſoners came with the Pirates, *Thatch* and Major *Bonnet*, from the Bay of *Honduras* to *Providence*, one of the *Bahama* Iſlands, except *Robert Tucker*, who came to them out of a Sloop belonging to *Bermudas*; that they took ſeveral Veſſels; after which they came and lay off the Bar of *Charles-Town*, where they took five Veſſels more; that from *Charles-Town*, they ſet ſail to *Topſail-Inlet* in *North Carolina*, where their Ship was run aſhore, and loſt by the Contrivance of *Thatch*; that after they had been there ſome Time, Captain *Thatch* came on board, and took away all their Arms, their beſt Hands, and all their Proviſions, and the reſt of the Men were put on Shoar; but that Major *Bonnet* ſent his Boat from the *Revenge*, and fetch'd them all on board him.

Att. Gen. You ſay all were on Shoar, and all might have gone into the Country? Pray what Reſtraints were any of you under?

Ign. Pell. None, when we left *Topſail-Inlet*. It was with a Deſign to go to *St. Thomas's*, to procure the Emperor's Commiſſion to go againſt the *Spaniards*; but the firſt Sail we ſaw we gave Chace to, and came up with her.

Hepworth Counſel for the King

Mr. *Hepworth*. What did you take out of that Veſſel?

Ign. Pell. We took ſome Proviſions out of her. After we had diſcharged her, we ſaw another which we chaſed, and took; and after we had taken out ſome Proviſions, we diſcharged her. Next Day we ſaw two Sloops bound to *Bermudas*, which we took; and the Day after we gave Chace to another, bound to ——— and came up with her, in which were ſome *Negroes*. We left three *Negroes* on
Vol. vi. p. 165. board, and two Whitemen, and ſent three Hands from the *Revenge*; but ſeeing two Sloops more, we ſtood after them: One of which turned Tail, we never ſaw her more: We came up with the other Sloop, out of which we took thirty Barrels of Beef, and ſome Butter and other Proviſions.

Mr.

Mr. *Hepworth.* What did you return in the room of theſe Goods.

Ign. Pell. Some *Moloſſes*: And next Day we took a Ship, and a Scooner; which Major *Bonnet* took with him.

Mr. *Hepworth.* Did you take no Plunder out of thoſe?

Ign. Pell. The chief was Proviſions. Then we ſailed in Company, and the next Day we came to the *Capes* of *Virginia*; where we met with two Veſſels bound for *Glaſcow* in *Scotland*, out of which we took Proviſions and ſome Tobacco. Then we ſailed to Cape *James*; and coming to an Anchor there, we ſaw a Sloop, which was Captain *Manwaring*'s, and ſent our Dory, (Canoe,) with ſome Hands on board her; and, in a little Time after, they brought Captain *Manwaring* on board the *Revenge*.

Att. Gen. Were all the Priſoners on board *Manwaring*'s Sloop? or had they all their Arms ready when *Manwaring* was taken?

Ign. Pell. I can't ſay they were all on board; but they had all their Arms ready.

Chief Juſtice Trott. Did they all appear forward and active? Did none of them ſhew themſelves diſſatisfied, or unwilling to act at that Time.

Ign. Pell. One was as forward and willing to act as another, for what I obſerved.

Att. Gen. How long was Captain *Manwaring* Priſoner? and what became of the Goods? Did you ſhare them?

Ign. Pell. Yes; we ſhared a little before we came to *Cape Fear*.

Att. Gen. Did all the Priſoners receive their Shares?

Ign. Pell. Yes, Sir; I know nothing to the contrary.

[*Captain Thomas Read ſworn.*]

He depoſed that while he was Priſoner on board the *Revenge Sloop*, they ſaw another Sloop coming into the Bay, where they lay at Anchor; and that Major *Bonnet* ſent off five Hands with the Dory, (or Canoe;) and about an Hour after they came back again, and brought Captain *Manwaring* Priſoner with them: That the Major demanded *Man-*

waring's Papers; and he gave them to him. He then asked from whence he came, and what he had on board? *Manwaring* anſwered, he came from *Antegoa*, and was bound for *Boſton*, and gave an Account what he had on board. The next Morning, they took ſeveral Hogſheads out of *Manwaring*'s Sloop, and put them on board the Scooner; and he heard Major *Bonnet* ſay, there were twenty-one Hogſheads.

Chief Juſtice Trot. Do you know any Thing of their Sharing? Did they all take their Shares?

Capt. Read. I won't ſay I ſaw every Man have his particular Share; but they were all together when they did ſhare.

[*Captain* Peter Manwaring *ſworn.*]

Vol. vi. p. 166. He depoſed, That being at Anchor about Eight or Nine o' Clock in the Evening, he ſaw a Canoe coming, and ordered his Man to hale them: He asked from whence they came, and what Sloops they were? They anſwered Captain *Thomas Richards* from *St. Thomas's*, and Captain *Read* from *Philadelphia*; which they were glad to hear, and hoped all was well; but as ſoon as they came a board they clapp'd their Hands to their Cutlaſſes, and he found they were taken; and ſaid, *Gentlemen, I hope as you are* Engliſhmen, *you will be merciful; for you ſee we have nothing to defend ourſelves.* They ſaid they would be very civil; and the Deponent was ordered on board the *Revenge*. When he came there, Major *Bonnet* demanded his Papers. The next Morning *Tucker* the Priſoner, came to the Deponent, and bid him tell what he had on board, or it would be worſe for him. He anſwered, *He had Moloſſes, Sugar, and Rum*; and they took out the Moloſſes and Rum, and put on board the Scooner.

Att. Gen. How did they behave themſelves to you?

Capt. Manwaring. They were very civil: All brisk and merry; and had all Things plentiful, making Punch, and drinking.

[James Killing, Manwaring's *Mate*, *ſworn.*]

He depoſed, That on the 31ſt of *July*, between Nine and Ten in the Evening, they came to an Anchor near

near *Cape James*; that about Half an Hour after, he ſaw a Canoe coming, and haled them, asking from whence they came; and they anſwered, as above that he ordered the Men to hand down a Rope to them, and as ſoon as they came on board they clapped their Hands to their Cutlaſſes, and he found they were taken; that they curſed and ſwore for a Light, and took their Captain away to the *Revenge*. When they came into the Cabbin, they cut down the Pine-Aples with their Cutlaſſes, and asked what Liquor they had on board; and being anſwer'd *Rum*, they made a Bowl of Punch, and went to drinking the Pretender's Health, and hoping to ſee him King of *England*. The next Morning they took ſeveral Hogſheads of the Moloſſes and Rum, and put them on board the Scooner; that they invited the Deponent to go along with them, and threaten'd that if he would not, they would ſet him upon a Maroon Shore; but he refuſed: That afterwards they ſet ſail, taking the Sloop with them, and came to *Cape Fear*.

The Priſoners in their Defence ſaid,

THEY were all left upon a Maroon Shore, and muſt have periſhed, if they had not gone on board Major *Bonnet*, who invited them to go to *St. Thomas's*, where he would get the Emperor's Commiſſion to go a privateering on the *Spaniards*; and that having no Proviſions left, they took them out of ſuch Ships as they met with. The Priſoner's Defence to the firſt Indictment. Vol. vi. p. 167.

But the Evidence being full againſt them, and the Priſoners appearing to be old Offenders, who had been guilty of numberleſs Offences of this Kind, the Jury found them guilty.

The reſt of the Priſoners were afterwards try'd, and found guilty of the ſame Fact, except *Thomas Nicholas*, *Rowland Sharp*, *Jonathan Clark*, and *Thomas Gerrard*, who appeared plainly to be under a Force, and refuſed to ſhare the Plunder of the Ships that were taken with them.

Then the Priſoners were arraign'd, and try'd upon the other Indictment, which ſets forth,

THAT

Vol. vi. p. 171. The ſecond Indictment.

THAT *Edward Robinſon*, *Robert Tucker*, *William Scot*, &c. on the 31ſt of *Auguſt*, in the 5th Year of King *George*, by Force and Arms, on the High Sea, in a certain Place, called *Cape Fear*, in the Latitude of 34. or thereabouts, and within the Juriſdiction of the Court of Admiralty of *South-Carolina*, did piratically and feloniouſly ſet upon, board, break, and enter a certain Merchant Sloop, called the *Fortune*, *Thomas Read* Commander; and then and there piratically and feloniouſly did make an Aſſault upon the ſaid *Thomas Read*, and others his Mariners, putting them in Corporal Fear of their Lives; and did then and there piratically and feloniouſly ſteal, take, and carry away ſix Tierces of Bread, of the Value of thirteen Pounds current Money of *Penſilvania*, four Barrels of Bread, Value four Pounds, one Barrel of *Linſeed-Oil*, Value ſeven Pounds, two Tierces of Hams, Value twenty Pounds, twenty Barrels of Flower, Value twenty Pounds, Six *China* Plates, Value three Pounds, ſeven Iron-bound Blocks, Value forty Shillings, ninety Fathom of Rigging, Value three Pounds, and the Pump, with Boxes and Breaks, Value twenty Shillings of like Money, the Goods and Chattels of certain Perſons, to the Jurors unknown, being found in the aforeſaid Sloop, in the Cuſtody of the ſaid *Thomas Read* and his Mariners, againſt the King's Peace, his Crown, and Dignity, &c.

[Ignatius Pell, *Boatſwain to the Pirate*, *ſworn*]

The Evidence againſt the Priſoner on the ſecond Indictment.

Mr. *Hepworth*. Give an Account of the taking of Captain *Thomas Read*.

Ign. Pell. Captain *Read* was in Company with two Veſſels more which we took; but did not ſhare till we came to *Cape Fear*.

Mr. *Hepworth*. Were the Goods mentioned in the Indictment taken out?

Ign. Pell. Yes; and the Priſoners at the Bar had their Shares.

[*Captain* Peter Manwaring *ſworn*.]

Mr. *Hepworth*. Pray give an Account of the ſharing Captain *Read*'s Goods.

Captain

Captain Manwaring. As for taking of Captain *Read*, I can ſay nothing, becauſe he was taken before I was taken; but when we came to *Cape Fear* they ſhar'd what they had.

[*Captain* Thomas Read *ſworn.*]

He depos'd, That after he was taken, *Robert Tucker*, with ſome others, came on board him, and afterwards they ſail'd to *Cape Julopen*, where Captain *Manwaring* was taken; and afterwards to *Cape Fear*, where they ſhar'd the Goods mention'd in the Indictment.

Edward Robinſon. When did you ſee me on board your Sloop?

Captain Read. I cannot ſay I ſaw you on board; but you were with them when they ſhar'd.

Chief Juſtice Trott. If you was not on board; yet if you was one of the Crew, and ſtood ready to aſſiſt thoſe that boarded her, you are as much a Pirate as the other.

[James Killing *ſworn.*]

He depos'd, That he ſaw the Priſoners ſharing the Goods at *Cape Fear.*

[Francis Griffin, *Captain* Read's *Mate*, *ſworn.*]

He depos'd, That after they were taken, *Tucker* and ſome others came on board, and that *Tucker* fell to cutting and wounding their People; that they were carried to *Cape James*, or *Cape Julopen*, where Captain *Manwaring* was taken; and from thence they ſail'd to *Cape Fear*; and the Goods mention'd in the Indictment were taken out, and ſhared by the Pirates.

The Priſoners made the ſame Defence to this Indictment, they had done to the other, *viz. That they were under a Force*; but were all found guilty, except *Thomas Nicholls*, *Rowland Sharp*, *Jonathan Clark*, and *Thomas Gerrard*, who appear'd to be detain'd againſt their Wills.

On Wedneſday the 5th of *November*, 1718. the Chief Juſtice *Trott* paſs'd Sentence upon all the Priſoners (except thoſe who were acquitted, and Ma-

jor

jor *Bonnet*, who was not yet taken) in the following Words, *viz.*

Vol. vi. p. 183. The Sentence paſs'd on the Priſoners.

YOU the ſaid Robert Tucker, Edward Robinſon, Neal Paterſon, *&c. ſhall go from hence to the Place from whence you came, and from thence to the Place of Execution, where you ſhall be ſeverally hang'd by the Neck, till you are ſeverally dead. And the God of infinite Mercy be merciful to every one of your Souls.*

Major *Bonnet* taken, and brought to his Trial.

Major *Stede Bonnet* having been retaken on the Sixth of *November*, was on the Tenth of the ſame Month brought to the Bar, and arraign'd upon both Indictments. To which he pleaded *Not Guilty*.

The Witneſſes giving much the ſame Evidence againſt *Bonnet* they had done againſt his Crew, I ſhall only take notice of that Part of it which had a particular Relation to him.

Ignatius Pell, the firſt Witneſs, depos'd, That he came acquainted with Major *Bonnet* at the Bay of *Honduras*; and that then Captain *Thatch* was Commander in Chief; who having left them behind, they went on board Major *Bonnet*'s Sloop, intending to get the Emperor's Commiſſion to go a privateering; but took the firſt Ship they ſaw, *and ſo on, as in his former Evidence.*

Chief Juſtice Trott. Was not Major *Bonnet* your Commander?

Ign. Pell. He was call'd our Captain, to be ſure; but the Quarter-Maſter *Tucker* had more Power than he.

Att. Gen. Had he his Share of *Manwaring*'s Goods?

Ign. Pell. He had it.

Bonnet. Did you ever hear me force any Man to go?

Ign. Pell. No, Major; I can't ſay you did.

Bonnet. Do you remember, that when they began to quarrel about Proviſions, I ſaid I would leave the Sloop.

Ign. Pell. I do remember you ſaid ſo.

Chief Juſtice Trott. But if you did take ſome Proviſions, would not leſs than thirteen Veſſels ſatisfy you.

Bonnet. It was contrary to my Inclinations.

[*Captain*

[*Captain* Manwaring *ſworn again.*]

Chief Juſtice Trott. When your Ship was taken, before whom was you brought? Vol. vi. p. 184.

Manwaring. Before the Man at the Bar, (*Bonnet*;) Captain *Thomas* he was call'd then, and I gave him my Papers; the next Day they hoiſted the Rum and Moloſſes out of the Sloop, and put them on board the Scooner; but the Gentleman was very civil to me.

Bonnet. Did you ever ſee me ſhare among the reſt?

Manwaring. You was in the Round-Houſe, and a Bundle and ſome Pieces were brought, and I ſaw you take it and give it the Negroe Boy to put into the Cheſt.

Bonnet. There were ſeveral that I kept their Shares for, but it was not mine. Did you ever hear me order any Thing out of the Sloop?

Manwaring. I am ſorry you ſhould ask me that Queſtion, for you know I did; and it was my All that I had in the World. I don't know but my Wife and Children are now periſhing in *New-England* for want of Bread; had it been only myſelf, I had not matter'd it ſo much; but my poor Family grieves me. Vol. vi. p. 185.

[James Killing *ſworn.*]

Beſides his former Evidence he depos'd, That Major *Bonnet* order'd him to go and ſhew which was the Rum, and which was the Moloſſes; and that *Bonnet* gave Orders for taking out the Goods.

[*Captain* Read *ſworn.*]

He depos'd, That when they were at *Cape James*, they ſaw a Sloop come to an Anchor, and Major *Bonnet* order'd the Dory (the Canoe) with five Hands to go off, and in about half an Hour they came on board with Captain *Manwaring*; and that Major *Bonnet* afterwards gave Orders to take out the Goods.

Att. Gen. Do you know if the Major receiv'd his Share?

Capt.

Capt. Read. He was in the Round-Houſe when they ſhar'd; and they brought in ſeveral Pieces of Cloth, and a Bag of Money; and he order'd it to be put into the Cheſt by the Boy.

Then the Priſoner call'd a Boy to give Evidence on his Behalf; who depos'd, That he heard when Major *Bonnet* took out his Clearance at *North Carolina*, the Sloop was clear'd for *St. Thomas's*, for a Commiſſion to go againſt the *Spaniards* a privateering.

Chief Juſtice Trott. If this be all the Evidence you have, it will not be of much Uſe to you.

Bonnet. I never took a Veſſel, but with Captain *Thatch.*

Chief Juſtice Trott. Did you not take Captain *Manwaring*'s Sloop?

Bonnet. It was contrary to my Inclinations: I told them ſeveral Times, if they would not leave off that Courſe of Life, I would leave the Sloop; and when Captain *Manwaring* was taken, I was aſleep.

Chief Juſtice Trott. Captain *Read* ſwears you order'd the Dory to be ſent off with five Hands to take him.

Major *Bonnet* found guilty.

The Jury being withdrawn, return'd after ſome Time, and brought in their Verdict, That the Priſoner was GUILTY.

Vol. vi. p. 18.

Then the Court adjourn'd till the next Day, being Tueſday the 11th of *November*, when the Priſoner deſir'd to withdraw his Plea of Not guilty to the ſecond Indictment, which charged him with the taking of Captain *Read*, and pleaded GUILTY.

He is executed.

Sentence being paſs'd on him for Piracy as uſual, on the 12th of *November*, he was executed at the *White Point* near *Charles-Town* on the 10th of *December* following.

PRO-

PROCEEDINGS *of the Houſe of Lords in* Ireland *againſt* JEFFERY GILBERT *Eſq; Lord Chief Baron,* JOHN POCKLINGTON *Eſq; and Sir* JOHN St. LEGER, *Knight, Barons of the* Exchequer *there, for iſſuing Proceſs in the Cauſe of* Anneſly *and* Sherlock, *in Oppoſition to an Order of that Houſe,* July 28. 5 Geo. I. 1719.

Alexander Burrowes, High Sheriff of the County of *Kildare*, having been ſeveral Times fined by the Court of *Exchequer*, for not obeying an Order of that Court, which he apprehended to be a Breach of an Order of the Houſe of Lords, preſented a Petition to that Houſe of the following Purport, *viz.*

Vol. vi. p. 188. Proceedings againſt the Barons of the *Exchequer* in *Ireland.*

THAT on the 3d of *October*, 1717. their Lordſhips having order'd the High Sheriff of the County of *Kildare* to put *Heſter Sherlock* into the Poſſeſſion of the Lands of *Little-Rath*, and other Lands in the ſaid Order mentioned, to hold till ſhe ſhould receive thereout the Sum of 1507*l.* 14*s.* 8*d. Farthing*, chargeable on the ſaid Lands.

Petition of the High Sheriff of *Kildare.*

Charles Nattal, then High Sheriff of the ſaid County, did accordingly put the ſaid *Heſter Sherlock* into the Poſſeſſion of the Premiſſes; and ſhe was actually in Poſſeſſion thereof when the Petitioner was ſworn Sheriff of the ſaid County of *Kildare* for the Year ending at *Michaelmas*, 1718.

That on the 15th of *March*, 1717. an Injunction iſſued out of the Court of *Exchequer*, ſign'd by the Right Honourable *Jeffery Gilbert* Eſq; Lord Chief Baron of the ſaid Court, directed to the Petitioner then Sheriff of the ſaid County; whereby he was requir'd, upon Receipt of the ſaid Order, bearing Date

Date the 19th of *February* preceding, to reſtore *Maurice Anneſly* Eſq; to the Poſſeſſion of the ſaid Lands, and to ſupport the ſaid *Maurice Anneſly* in ſuch Poſſeſſion till further Orders of the ſaid Court, or till the ſaid *Maurice Anneſly* ſhould be evicted by due Courſe of Law. Which Injunction was deliver'd to the Petitioner by *John Anneſly* the ſaid *Maurice*'s Brother, who requir'd him to give him Poſſeſſion of the ſaid Lands, having a Letter of Attorney from his ſaid Brother for that Purpoſe. But the Petitioner refus'd to execute the ſaid Injunction, conceiving it to be a Breach of their Lordſhips ſaid Order of the 3d of *October*, 1717.

Whereupon the ſaid *John Anneſly* mov'd the Court of *Exchequer* on the 13th of *May*, 1718. on his Affidavit, ſetting forth, That the Petitioner refus'd to execute the ſaid Injunction; which Affidavit was read by *John Beauman* Gent. one of the Attorneys of the ſaid Court; and the ſaid Lord Chief Baron, and the two other Barons, thereupon order'd, That the Petitioner ſhould be fin'd Forty Pounds, if he did not return the ſaid Injunction in four Days. And on ſeveral Motions afterwards by the ſaid *John Beauman*, the ſaid Barons impos'd ſeveral Fines on him, amounting to Seventy ſeven Pounds; and on another Motion on the 30th of *June*, 1718. order'd an Attachment againſt the Petitioner.

That on the 7th of *July*, 1718. the Petitioner re-
Vol. vi. p. 189. turn'd the ſaid Injunction with their Lordſhips Order of the 3d of *October*, 1717. and the Reſolutions of that Houſe, dated *Feb.* 11. 1703. on the Petition of *Edward* Earl of *Meath*, and *Cecilia* his Wife; and that the Petitioner, by Reaſon of their Lordſhips ſaid Order and Reſolutions, durſt not reſtore the ſaid *Maurice Anneſly* to the Poſſeſſion of the Premiſſes, as by the ſaid Injunction was requir'd.

That the ſaid Barons, *Pocklington* and *St. Leger*, ſitting in the *Exchequer-Chamber*, the 16th of *July*, 1718. and having heard the ſaid ſeveral Fines impos'd on the Petitioner read to them, were pleas'd to reduce and take off the ſaid Fines, upon paying Sixpence in the Pound. But in the Afternoon of the ſame Day, *John Draycott*, an Attorney of the ſaid Court, who paid the Box for the Petitioner on taking off the ſaid Fines, was ſent for by the Lord Chief Baron *Gilbert* to his Houſe, where the other

two

two Barons then were; and having heard the ſaid Injunction read, and what was offer'd in Behalf of the Petitioner, in Juſtification of the ſaid Return, the Barons oblig'd the ſaid *Draycott* to take back the Money he had paid for taking off the ſaid Fines, and eſtreated the ſame; which afterwards iſſued in Proceſs againſt the Petitioner, although the ſaid Return was never complain'd off by the ſaid *Maurice Anneſly*; nor had the Petitioner an Opportunity, or a Day given him to juſtify the Legality of the ſaid Return, though the ſame was pray'd by *Draycott* in Behalf of the Petitioner.

That the Barons having no Regard to the ſaid Return, on the Motion of *Beaumont*, the 7th of *November* laſt, order'd the ſaid Attachment to be renewed againſt the Petitioner; whereupon he was oblig'd to abſcond, and ſuffer'd very much in his Fortune, and could not come upon his Accounts before the ſaid Barons of the *Exchequer*, being aſſur'd they would have committed him, if he had appear'd in the ſaid Court, for not obeying the ſaid Injunction. And the Barons taking Advantage of the Petitioner's Circumſtances, fin'd him 1200*l.* for not coming upon his Accounts, though he always was ready to render his Majeſty a juſt Account of his Sheriffwick.

And therefore pray'd ſuch Relief in the Premiſſes, as to their Lordſhips, in their great Wiſdom, ſhould ſeem meet.

Upon reading this Petition, the Houſe of Lords referred it to the Committee for Courts of Juſtice; who having conſider'd it, made a Report by the Lord Biſhop of *Clogher*, their Chairman, to the Effect following:

The Report of the Committee of Lords of *Ireland*, on conſidering the ſaid Petition.

THAT by an Order of that Houſe, of the 3d of *October*, 1717. they find *Heſter Sherlock*, Widow, was put into the Poſſeſſion of the Lands of *Little Rath*, &c. as in the ſaid Petition is ſet forth, and continued ſo poſſeſs'd for near two Years by Virtue of the ſaid Order. That by the Minutes of the *Chancery* Side of the *Exchequer*, it appears, that the Lord Chief Baron, on the 19th of *February*,

1717. produced a * Letter, dated *London*, *Feb.* 8. 1717. ſign'd *Cowper C.* in which two Papers † were enclоſed, dated *Feb.* 6. 1717. ſign'd *William Cowper, Cler' Parliamentor'*, directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the reſt of the Barons, ſaid to come from the Lords of *Great Britain*, requiring them to reſtore *Maurice Anneſly* to the Poſſeſſion of the Lands he was diſpoſſeſs'd off, pending his ſaid Appeal in the Houſe of Lords of *Great Britain*.

Vol. vi. p. 190.

That thereupon the ſaid Barons, without any Motion, order'd an Injunction for reſtoring the ſaid *Maurice*

London, February 8. 1717.

My Lord Chief Baron,

* BY Order of the Houſe of Lords, (a Copy whereof I herewith ſend you,) I tranſmit to your Lordſhip, and the reſt of the Barons, of his Majeſty's Court of Exchequer in *Ireland*, the Order of the ſaid Houſe; whereby the Barons of the Court are commanded to reſtore Mr. *Anneſly* to the Poſſeſſion of his Eſtate. Your Lordſhip will immediately communicate this to the reſt of the Barons, and let me know, as ſoon as can be, what is done by yourſelf and the reſt of the Barons, in Purſuance to their Lordſhips Order, as you ſee by the above-mentioned Copy, I am ordered to require of you. I am

Your Lordſhips moſt Faithful Servant,

Cowper C.

To the Lord Chief Baron of the Exchequer in Ireland, *and the reſt of the Barons of the ſaid Court.*

Die Jovis, 6 Februarii, 1717.

† ORDERED by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord Chancellor do tranſmit the Order of this Houſe to the Barons of the Exchequer in *Ireland*, which requires them to cauſe Poſſeſſion to be forthwith delivered to *Maurice Anneſly* Eſq; of the Lands of which he was diſpoſſeſſed, pending his Appeal in this Houſe, commanding the Barons of the Exchequer at the ſame Time, to return to this Houſe, as ſoon as they can, an Account of what ſhall be done therein.

William Cowper, Cler' Parliamentor'

Die Jovis, 6 Die Februarii, 1717.

UPON Report from the Committee of the whole Houſe, to whom it was refer'd to conſider, by what Methods the Order of this Houſe, for the reſtoring Poſſeſſion to *Maurice Anneſly* Eſq; of the Eſtate in *Ireland*, whereof he was diſpoſſeſſed, pending his Appeal in this Houſe, may be moſt properly enforced and executed; it is ordered, by the Lords Spiritual and Temporal in Parliament aſſembled, That the Barons of the Court of Exchequer in *Ireland* do cauſe the ſaid *Maurice Anneſly* Eſq; to be forthwith reſtored to the Poſſeſſions of the Lands of which he was diſpoſſeſſed, pending his Appeal, which was received by this Houſe the Eighth of *June* laſt.

William Cowper, Cler' Parliamentor'

Maurice Anneſly to the Poſſeſſion of the Lands he was diſpoſſeſs'd of, pending his ſaid Appeal, whereby the Sheriff was forthwith to put the ſaid *Maurice* into the Poſſeſſion of the ſaid Lands.

That on the 14th of *March*, 1717. Affidavit was made, before the Lord Chief Baron, by *John Anneſly*, That he was diſpoſſeſs'd of the Lands in queſtion, which he held by a Leaſe from *Maurice*, pending his ſaid Appeal.

That on the ſame Day, the ſaid Affidavit being filed, in order to have the Injunction made out, Mr. *John Draycott*, Attorney for Mrs. *Sherlock*, before it was iſſued, attended Mr. *Becher*, Deputy-Remembrancer, at his Office, and in the Preſence of the ſaid *John Anneſly* inform'd the ſaid *Becher*, That the ſaid Affidavit was inſufficient, for he was ready to prove that the ſaid *Maurice Anneſly* was not, at the Time of the ſaid Appeal, or at any Time ſince, in Poſſeſſion of the Lands mention'd in the Affidavit, having ſold the ſame ſome Years before to *Andrew Wilſon* Eſq; and Mrs. *Frances Harman*.

That by two Copies of Memorials, out of the Regiſter's Office, for Regiſtering Deeds, it appear'd, That by Deeds of Leaſe and Releaſe, dated the 1ſt and 2d Days of *March*, 1714. the Lands of *Little Rath*, *Darr*, and *Bodingſtown*, in the Borough of *Naas* and County of *Kildare*, were convey'd by *Maurice Anneſly &c.* to *Andrew Wilſon* and his Heirs; and the Lord *Altham* declared upon his Honour, that he knew the ſaid *John Anneſly* paid Rent to the ſaid *Andrew Wilſon*, by virtue of and under the ſaid Purchaſe. And it appear'd by other Deeds of Leaſe and Releaſe, dated the 2d and 3d Days of *April*, 1715. That the ſaid *Maurice Anneſly* convey'd to *Frances Harman* Widow, and her Heirs, the Lands of *Mullenafooky* in the ſaid County of *Kildare*. That notwithſtanding there was no County mention'd in the ſaid Affidavit, and ſuch Notice given of the ſaid Sale to the Officer as aforeſaid; and that it did not appear by the ſaid Affidavit, that the ſaid *Maurice Anneſly* was diſpoſſeſs'd of the Lands therein mention'd during his Appeal. The ſaid Injunction was iſſued directly to the Sheriff of the County of *Kildare*, on the 22d of *February*, in the 4th of the King, returnable into the ſaid Court of *Exchequer*, *Quinden' pas'* then next enſuing.

That by an Affidavit, ſworn by *John Anneſly* the 7th of *May*, 1718. before Mr. Baron *St. Leger*, he depos'd, That on the 15th of *March* preceding, he deliver'd the above-mention'd Injunction to *Alexander Burrows* Eſq; then High Sheriff of *Kildare*, and ſhew'd him a Letter of Attorney from the ſaid *Maurice*, impowering the ſaid *John* to receive the Poſſeſſion of the Lands in the ſaid Injunction mentioned; but the ſaid Sheriff refuſed to execute the ſame.

Vol. vi. p. 191. That there were Fines laid upon the ſaid Sheriff, for not returning the ſaid Injunction, amounting to 77*l.* as in the ſaid Petition is ſet forth.

That the ſaid *Draycott* prov'd, That the Barons had due Notice of the Order of that Houſe, and of the Reſolutions made the 11th of *February*, 1703. before any Proceeding in the ſaid Cauſe, ſubſequent to the Order of that Houſe of the 3d of *October*, 1717. and that the ſaid *Anneſly*, and *Beauman* his Attorney, were ſerv'd with Copies of the ſaid Order and Reſolutions, before any Motions were made by them in the ſaid Cauſe.

That by the Minutes of the 13th of *June*, 1718. it appear'd, that Mr. Chancellor of the *Exchequer* declar'd, That the Order of the Houſe of Lords of *England* being only directed to the Barons of that Court, and that he found the Order of that Court, which was made thereon, was made as if done by him and the Treaſurer, as well as the Barons; and he apprehended, that in regard the ſaid Orders were not directed to him, or he preſent when the Order of the Court of *Exchequer* was made, *That he had nothing to do therewith, and did not conſent thereto.*

That it appear'd the ſaid Cauſe between *Sherlock* and *Anneſly* was of the *Chancery* Side of the *Exchequer*; and all Bills of the *Chancery* Side us'd to be directed to the Chancellor, Treaſurer, and Barons; and if a Bill was otherwiſe directed, it wou'd be Error.

That on the 30th of *June*, 1718. an Attachment was awarded againſt the Burrow and Sheriff, for not returning the Injunction, Teſted the 1ſt of *July*, in the 4th of the King, and returnable before the Chancellor, Treaſurer, and Barons of the ſaid Court, *in Cro' Animar'*.

That

That the ſaid Injunction was return'd, and the Fines compounded or taken off, as in the ſaid Petition is ſet forth; but that upon the ſame Day *Draycott* was ſent for to the Lord Chief Baron's Houſe, and obliged to take back the Money he had paid to the Box for taking off the ſaid Fines; and the ſame were eſtreated.

That the Return made by the Sheriff on the ſaid Injunction, was to this Purpoſe, *viz. That before the ſaid Writ came to him, the Order of the Houſe of the* 3*d of* October, 1717. *and the Reſolutions of that Houſe of the* 11*th of* February, 1703. *were deliver'd to him, which he recites* in hæc verba*.

Which

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* *The Return upon the Injunction.* Canſellar' Theſaurar' & Baronibus Infraſcript' humilime, Certifico quod ante adventum hujus Brevis mihi direct' quædam Reſolutiones, prænonorabil' Dom' Procerum hujus Regni Hiberniæ fact' in Parliament' apud Dublin in hoc Regno congregat' undecimo, die Febr' Anno Dom. Milleſimo Septingentiſimo tertio mihi deliberat' fuer' quæ ſequuntur in hæc Verba ſcilicet.

Reſolutions of the Right Honourable the Houſe of Peers, the 11*th of* February, 1703.

Order'd, on Motion, That the Petition of *Edward* Earl of *Meath*, and *Cecilia* Counteſs of *Meath* his Wife, be read. Read accordingly.

Order'd, on Motion, That the Clerk of the Rolls do bring into this Houſe the Roll of the Acts of Parliament of the 38th of *Henry* VI.

Reſolv'd, on the Queſtion, *Nemine Contradicente*, That by the ancient and known Laws and Statutes of this Kingdom, her Majeſty hath an undoubted Juriſdiction and Prerogative of judging in this her High Court of Parliament, in all Appeals and Cauſes within her Majeſty's Realm of *Ireland*.

Reſolved, on the Queſtion, *Nemine Contradicente*, That the Determinations and Judgments of this High Court of Parliament are final and concluſive, and cannot be reverſed or ſet aſide by any other Court whatſoever.

Reſolved, on the Queſtion, *Nemine Contradicente*, That if any Subject or Reſiant, within this Kingdom, ſhall hereafter preſume to remove any Cauſe determined in this High Court of Parliament, to any other Court, ſuch Perſon or Perſons ſhall be deemed Betrayers of her Majeſty's Prerogative and Juriſdiction, and the undoubted ancient Rights and Priviledges of this Honourable Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Reſolved, on the Queſtion, *Nemine Contradicente*, That if any Subject or Reſiant, within this Kingdom, ſhall preſume to put in Execution any Order from any other Court, contrary to the final Judgment and Determination of this High Court of Parliament, ſuch Perſon or Perſons ſhall be deemed Betrayers of her Majeſty's Prerogative and Juriſdiction, and the undoubted ancient Rights and Priviledges

Which Return the Lords Committees annex'd to their Report.

Vol. vi. p. 192. That the ſaid Attachment againſt *Burrowes* the Sheriff was ſeveral Times renew'd; whereby he was oblig'd to abſcond, as in the ſaid Petition is ſet forth; and he was thereupon find 1200*l.* and upwards, for not appearing and paſſing his Accounts.

That

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viledges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

En. Sterne, Cler' Parliament'.

Et ulterius certifico quod ante Adventum iſtius Brevis mihi direct' quidam Ordo fact' per prænonorabil' Domin' Spiritual' & Temporal' in Parliament' in hoc Regno congregat' gerend' dat' tertio die Octobris, Anno Dom' milleſimo ſeptingenteſimo decimo ſeptimo, etiam mihi deliberat' fuit, qui ſequitur in hæc verba, ſcilicet.

Die Jovis, tertio die Octobris, 1717.

WHEREAS by the Report made from the Lords Committees, appointed to conſider the propereſt Method for the relieving of *Heſter Sherlock* Widow, &c. purſuant to what was ordered and adjudged by this Houſe, June 19. 1716. in a Cauſe, wherein the ſaid *Heſter Sherlock* Widow was Appellant, and *Maurice* and *John Anneſly* Eſqs; were Reſpondents; as alſo upon the Reſolutions agreed to this Day by this Houſe, it appears, That the Sum of One thouſand five hundred and ſeven Pounds fourteen Shillings and eight Pence Farthing was due to *Heſter Sherlock* the Appellant upon the *19th* Day of *February* 1716. on Account of the Principal and Intereſt of the Portion of *Edward Sherlock* decreed unto the ſaid Appellant as Adminiſtratrix to the ſaid *Edward* by this Houſe on the *19th* Day of *June*, 1716. and that the Lands of *Little Rath*, *Bodingſtown*, *Darr* and *Mullenafooky* in the Barony of *Naas*, and County of *Kildare*, are chargeable with and liable to the Payment of the ſaid Sum: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the High Sheriff of the County of *Kildare* do forthwith put the ſaid *Heſter Sherlock* into the Poſſeſſion of the ſaid Lands of *Little Rath*, *Bodingſtown*, *Darr*, and *Mullenafooky*, ſubject to the ſaid Sum of One thouſand five hundred and ſeven Pounds fourteen Shillings and eight Pence Farthing, to be held by her the ſaid *Heſter*, until ſuch Time as ſhe ſhall receive the ſaid Sum chargeable upon the ſaid Lands as aforeſaid. And this ſhall be a ſufficient Warrant in that Behalf.

To Charles Nuttal *Eſq*; *High Sheriff of the County of* Kildare.

EN. Stern. Cler' Parliamentor' virtut' cujus Ordin' prædict' —— Carolus Nuttal potuit prædict' Heſter Sherlock in plen' quiet' & pacific' poſſeſſion' omn' Vill' & Terr' prædict' & prædict' Heſter Sherlock, jam uſque continuavit in ead' poſſeſſion' præmiſs' prædict' ſecund' tenor' & effect' Ordinis prædict' Ratione quorum Reſolution' & Ordin' in Præjudict' & Seſſion' privileg' Parliament' per Leges & Statut' hujus Regni Hiberniæ provis' infra nominat' Maurice —— Anneſly Ar' ad poſſeſſion' ſeparat' Vill' & Terr' de Little Rath, Bodingſtown, Darr, & Mullenafooky infra mentionat' reſtituer' non audeo. Sic reſpondend'

Alex. Burrowes, Ar' Vic'

That upon the 4th of *February*, 1718. the Lord Chief Baron and Mr. Baron *Pocklington*, upon the Receipt of three Papers, † which they alledg'd to be Orders

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Anneſly vers' Sherlock. *Die Veneris*, 23 *Januarii*, 1718.

† ORDERED by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord High Chancellor of *Great Britain* do tranſmit the two Orders made this Day, on the Behalf of *Maurice Anneſly* Eſq; to the Barons of the Court of Exchequer in *Ireland*, commanding them at the ſame Time, to return, as ſoon as they can, an Account of what ſhall be done therein.

William Cowper, Cler' Parliamentor'

London, *January* 27. 1718.

My Lord Chief Baron,

BY Order of the Houſe of Lords, (a Copy whereof I herewith ſend you,) I tranſmit to your Lordſhip, and the reſt of the Barons of his Majeſty's Court of Exchequer in *Ireland*, two Orders of the ſaid Houſe made in the Cauſe of *Anneſly* againſt *Sherlock*, by one of which the Barons of that Court are commanded to proceed, by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the the Appellant *Maurice Anneſly* Eſq; to be reſtored to him as was required by Order of the ſaid Houſe of the Sixth of *February* laſt; and by the other, the ſaid Barons are commanded to cauſe *Heſter Sherlock* to account before them upon Oath, for the Rents and Profits of the Eſtate in Queſtion, which ſhe has made or received, ſince her gaining Poſſeſſion thereof by Order of the Houſe of Lords in *Ireland*, and anſwer and pay the ſame to the Appellant *Maurice Anneſly* Eſq; but without Prejudice to the Right, in Caſe of an Appeal to be brought by either Party from the Decree of the Court of Exchequer in *Ireland*.

Your Lordſhip will immediately communicate this to the reſt of the Barons, and return, as ſoon as you can, an Account of what ſhall be done by yourſelf and the reſt of the Barons, in Purſuance of your Lordſhips ſaid Orders, as you ſee by the above-mention'd Copy I am order'd to require of you.

I am your Lordſhips moſt faithful Servant,

Parker. C.

To the Lord Chief Baron of the Exchequer *in* Ireland, *and the reſt of the Barons.*

Anneſly vers' Sherlock. *Die Veneris*, 23. *Januarii*, 1718.

UPON Report from the Lords Committees, appointed to enquire into the Reaſon of the Delay, in not obeying the Orders of this Houſe, relating to the Appeal of *Maurice Anneſly* Eſq; and how the ſame may more properly be enforc'd: It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Barons of the Court of *Exchequer* in *Ireland* be, and are hereby directed to proceed, by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the ſaid *Maurice Anneſly*, as requir'd by Order of this Houſe of the Sixth of *February* laſt, to be reſtor'd to him.

William Cowper, Cler' Parliament'

Orders from the Houſe of Lords of *Great Britain*, dated the 23d of *January*, 1718. ſign'd *William Cowper*, *Cler' Parliamentor'*, in a Letter produc'd by the ſaid Barons from the Lord Chancellor, dated *London* the 27th of *January*, 1718. ſign'd *Parker C.* which came by the Poſt directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the reſt of the Barons of that Court; whereby it was order'd, That the ſaid Barons ſhou'd cauſe *Heſter Sherlock* to account before them upon Oath, for the Rents and Profits of the Eſtate in queſtion which ſhe had receiv'd ſince her gaining Poſſeſſion thereof by the Order of the Houſe of Lords of *Ireland*, and to pay the ſame to *Maurice Anneſly* Eſq; but without Prejudice in Caſe of an Appeal; and that the ſaid Barons ſhou'd proceed, by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the ſaid Eſtate to be reſtor'd to the ſaid *Maurice Anneſly*.

That without any Proof that the ſaid alledg'd Orders were regularly ſign'd and compar'd, and without Motion of Council or Attorney, it was order'd, in the Name of the Chancellor and Treaſurer, Lord Chief Baron, and the reſt of the Barons of his Majeſty's Court of *Exchequer* in *Ireland*, That an Injunction ſhou'd forthwith iſſue, requiring the ſaid *Heſter Sherlock*, and the ſeveral Tenants of the Lands in queſtion, to reſtore the Poſſeſſion thereof to the ſaid *Maurice Anneſly*: And it was order'd, That the Rents remaining in the ſeveral Tenants Hands, from the Time of *Heſter Sherlock*'s Poſſeſſion, ſhou'd be forthwith paid over to the ſaid *Maurice Anneſly*, though by the Order of the Houſe of Lords of *Great Britain* the Barons were only directed to oblige *Heſter Sherlock* to account before them

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Anneſly vers' Sherlock. Die Veneris, 23 *Januarii*, 1718.

ORDERED, by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Barons of the Court of *Exchequer* in *Ireland*, do cauſe the Reſpondent *Heſter Sherlock*, to account before them upon Oath, for the Rents and Profits of the Eſtate in Queſtion, which ſhe has made or receiv'd ſince her gaining the Poſſeſſion thereof by the Order of the Houſe of Lords in *Ireland*, and to Anſwer and Pay the ſame to the Appellant *Maurice Anneſly* Eſq; but without prejudice to the Right, in Caſe of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland*.

William Cowper, Cler' Parliamentor'

them, upon Oath, for the Rents of the Lands receiv'd by her ſince her Poſſeſſion.

That, purſuant to the ſaid Order, an Injunction iſſued, bearing Teſt the 12th of *February*, directed to *Heſter Sherlock* and Twenty one Perſons as Tenants to the ſaid Lands: That the ſaid *Heſter Sherlock* was never ſerv'd with the ſaid Injunction or Order; notwithſtanding which, ſhe was thereby diſpoſſeſs'd of the ſaid Lands about the 20th of the ſame Month of *February*, by the Attornments of the Tenants, except a ſmall Part thereof in the Poſſeſſion of *Dennis Galvin:* That on the 23d of *February*, an Attachment was order'd againſt the ſaid *Dennis Galvin*, though no ſuch Perſon was nam'd in the Injunction; and the Committee further obſerves, that there is no Name of any Attorney to the firſt Injunction.

Which Report being read, the Houſe agreed to the ſame and came to the following Reſolutions:

Reſolutions of the Iriſh Houſe of Lords, upon the Report of the Committee.

Reſolv'd, That *Alexander Burrows* Eſq; late High Sheriff of the County of *Kildare*, hath fully prov'd the Allegations of his Petition.

Reſolv'd, That in his not obeying the Injunction of his Majeſty's Court of *Exchequer*, dated the 22d of *February*, 1717. in the Cauſe between *Sherlock* and *Anneſly*, he had behav'd himſelf with Integrity and Courage, and with Reſpect to the Orders and Reſolutions of that Houſe.

Reſolv'd, That the Fines impos'd on the ſaid *Alexander Burrowes*, amounting to 77*l.* for not returning the ſaid Injunction, be taken off without Fees.

Reſolv'd, That the Fine of 1200*l.* and upwards, impos'd on the ſaid *Alexander Burrowes*, for not paſſing his Accounts, ſhall be taken off when he ſhall have made a juſt Account, without other Fees than ſuch as are uſual on paſſing Sheriffs Accounts.

Reſolv'd, That the Lord Chief Baron, and the other Barons of the *Exchequer*, had due Notice of the Reſolutions of this Houſe of the 11th of *February*, 1703. in the Cauſe of the Earl of *Meath* and Lord *Ward*, before they made an Order for an Injunction to put *Maurice Anneſly* into Poſſeſſion; as alſo Notice of the Order of this Houſe, of the 3d of *October*, 1717. in the Cauſe of *Sherlock* and *Anneſly*. Vol. vi. p. 194.

Reſolv'd

Reſolv'd the Lord Chief Baron, and the other Barons, in the Proceedings between *Sherlock* and *Anneſly*, as alſo againſt *Alexander Burrowes* Eſq; late High Sheriff of the County of *Kildare*, have acted in direct Violation of the Orders and Reſolutions of this Houſe, and in manifeſt Derogation to, and Diminution of the King's Prerogative of finally judging in his High Court of Parliament in *Ireland*; as alſo of the Rights and Privileges of this Kingdom, and the Parliament whereof.

Reſolv'd, *Nem. Con.* That it is the Duty of the Barons of the *Exchequer*, where there is any Wrong or Prejudice done the King, in Matters lying before them, to inform the King or the Chief Governors of the Kingdom, or the Council.

Reſolv'd, That the Caſe of *Sherlock* and *Anneſly*, being Matter not only of Law but State, ought to have been laid before the King, the Chief Governor, or Conucil of this Kingdom, it ſo nearly concerning the King's Prerogative, and the Intereſt of the whole Kingdom.

Reſolv'd, That *Jeffery Gilbert* Eſq; Lord Chief Baron, and the other Barons, in their Proceedings between *Sherlock* and *Anneſly*, and againſt *Alexander Burrowes* Eſq; have acted contrary to Law, and to the eſtabliſh'd Practice of the King's Courts.

Reſolved, That the ſaid Lord Chief Baron, and the other Barons, having taken upon them to put in Execution a pretended Order from another Court, contrary to the final Judgment of the High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſly*, are Betrayers of his Majeſty's Prerogative, and of the Rights and Liberties of the Subjects of this Kingdom.

Order for taking the Barons into Cuſtody.

Vol. vi. p. 195.

Ordered, by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Right Honourable *Jeffery Gilbert* Eſq; Lord Chief Baron of the Court of Exchequer, *John Pocklington* Eſq; ſecond Baron of the ſaid Court, and Sir *John St. Leger* Knt. third Baron of the ſaid Court, ſhall, for the ſaid Offences, be taken into Cuſtody of the Gentleman-Uſher of the Black Rod, attending this Houſe.

DISSEN-

DISSENTIENT,

Joſeph Meath,	*Fitz-Williams*,
Welbore Kildare,	*Midleton Canc.*
Henry Killala & Achonry,	*Donerayle*,
Tim. Kilmore & Ardagh,	*William Derry.*

Reſolution of the Houſe of Lords of *Great Britain*, and the Dependancy of *Ireland* on this Crown.

On the 28th of *January*, 1719. it was reſolved by the Houſe of Lords of *Great Britain*, that *Jeffery Gilbert* Eſq; Lord Chief Baron of the Court of Exchequer in *Ireland*, and the other Barons of the ſaid Court, in their Proceedings in the Cauſe between *Anneſly* and *Sherlock*, in Obedience to the Orders of this Houſe, have acted according to Law, in Support of his Majeſty's Prerogative, and with Fidelity to the Court of *Great Britain*; and that his Majeſty be addreſſed to confer on them ſome Marks of his Royal Favour, as may recompence the ill Uſage they have received, by being unjuſtly cenſured and illegally impriſoned for doing their Duty; and that a Bill be brought in for the better ſecuring the Dependancy of *Ireland* upon the Crown of *Great Britain*.

Act for ſecuring the Dependency of *Ireland* on *Great Britain*.

On the 7th of *April* 1720. the Royal Aſſent was given to *An Act for the better ſecuring the Dependency of the Kingdom of* Ireland *upon the Crown of* Great Britain; which is as follows:

Preamble.

WHEREAS the Houſe of Lords of *Ireland* hath of late, againſt Law, aſſumed to themſelves a Power and Juriſdiction to examine, correct, and amend the Judgments and Decrees of the Courts of Juſtice in the Kingdom of *Ireland*; therefore for the better ſecuring of the Dependency of *Ireland* upon the Crown of *Great Britain*, may it pleaſe your moſt excellent Majeſty, that it may be declared; And be it declared by the King's moſt excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, That the ſaid Kingdom of *Ireland* hath been, is, and of Right ought to be ſubordinate unto, and dependent upon the Imperial Crown of *Great Britain*, as being inſeparably united and annexed thereunto: And that the King's Majeſty, by and with the

The Kingdom of *Ireland* is ſubordinate to *Great Britain*.

The King and Parliament of *Great Britain* may make Laws to bind *Ireland*.

the Advice and Conſent of the Lords Spiritual and Temporal, and Commons of *Great Britain* in Parliament aſſembled, had, hath, and of Right ought to have, full Power and Authority to make Laws and Statutes of ſufficient Force and Validity to bind the Kingdom and People of *Ireland*.

The Houſe of Lords of *Ireland*, have not Juriſdiction to judge of, affirm, or reverſe any Judgment, &c. given in any Court there, and their Proceedings thereon are void.

And be it further declared and enacted by the Authority aforeſaid, That the Houſe of Lords of *Ireland* have not, nor of Right ought to have, any Juriſdiction to judge of, affirm, or reverſe any Judgment, Sentence, or Decree given or made in any Court within the ſaid Kingdom; and that all Proceedings before the ſaid Houſe of Lords upon any ſuch Judgment, Sentence, or Decree, are, and are hereby declared to be utterly null and void, to all Intents and Purpoſes whatſoever.

The TRIAL *of* HUGH REASON *and* ROBERT TRANTER *at the* King's-Bench, *for the Murder of* EDWARD LUTTERELL *Eſq*; Feb. 3. 1721. Hill. 8 Geo. I.

The Indictment ſets forth,

The Indictment.

THAT the Priſoners, *Hugh Reaſon* and *Robert Tranter*, on the 17th of *October* laſt, about the Hour of Ten of the Clock in the Forenoon, by Force and Arms, in the Pariſh of *St. Clement Danes*, in the County of *Middleſex*, in and upon one *Edward Lutterell* Eſq; feloniouſly, voluntarily, and of their Malice aforethought, did make an Aſſault; and that the ſaid *Hugh Reaſon*, with a Piſtol then and there charged with Gun-Powder and leaden Bullets, which he ſhot off againſt the ſaid *Edward Lutterell*, did give him one mortal Wound under the Right Pap, of the Breadth of one Inch, and the Depth of nine Inches; of which Wound the ſaid *Edward Lutterell* languiſhed until Ten o'Clock in the Evening of the ſame Day, and then died at the Pariſh

Pariſh aforeſaid, of the Wound aforeſaid ; and that the ſaid *Robert Tranter*, at the Time of the Felony and Murder aforeſaid committed, was preſent, aiding and abetting the ſaid *Hugh Reaſon* to commit the ſaid Felony and Murder in manner aforeſaid, againſt the King's Peace, *&c.*

To which Indictment the Priſoners having pleaded, *Not Guilty*, Mr. *Strange*, of Counſel for the King, open'd the Indictment ; after which Mr. Serjeant *Cheſhire* open'd the Evidence; which I ſhall not trouble the Reader with here, becauſe he will find it at large in the Body of the Trial ; only take Notice of ſuch Points of Law and Remarks as the Serjeant was pleaſed to make in the opening of it. He ſaid : Vol. vi. p. 196. Mr. *Strange*, Serjeant *Cheſhire*, Counſel for the King. Vol. vi. p. 197.

AS on the one Hand the Priſoners were Officers of Juſtice, and muſt be protected in ſerving their Proceſs ; and as long as they did their Duty, muſt not be abuſed; yet when People ſubmitted to their Authority, they ought alſo to be protected. As the Law required the one to ſubmit, it requir'd the other to protect and preſerve their Lives ; and if an Officer gave unreaſonable Correction, where no Reſiſtance was made, and Hardſhips and Difficulties were put upon Priſoners, ſo as to ſhorten their Lives, he ſubmitted it to the Court whether ſuch Officers were not guilty of Murder. The Law was ſo careful of the Life, that, according to my Lord *Coke*, *If any Man who is in Cuſtody of a Goaler dies, the Coroner's Inqueſt muſt ſit upon him*, that the King may be apprized that the Subject had no foul Play, but died a natural Death. That this Policy of Law, was a good one : And when they had called their Witneſſes, it muſt be left to the Conſideration of the Court and the Jury, whether the Caſe of the Priſoners at the Bar was ſuch a one as could be juſtified ; or whether they would not deſerve the Puniſhment due to Ruffians and Aſſaſſines. Vol. vi. p. 198. 3 Inſt. 52. 1.

Mr. *Reeve* being alſo of Counſel for the King, ſaid,

HE apprehended this was not a Matter proper for them to ſhew with its uſual Aggravations ; for conſider- Mr. *Reeve*, Counſel for the King, ſtates the Fact.

conſidering the Priſoners were not allow'd Counſel, they were only to lay the Matter fairly before the Jury and the Court, both in relation to Matters of Fact and of Law.

That it was true, the Defendants were Officers of Juſtice, and were entitled to the Protection of the Law, ſo far as the Law authoriz'd their Actions; but in Caſe they exceeded their Authority, and uſed their Priſoners barbarouſly where there was no Occaſion for it, and a needleſs Quarrel happen'd which they themſelves were the Occaſion of, and a Perſon was killed, he ſubmitted it to the Court, if they were not guilty of Murder.

They agreed, if the Perſon arreſted made Reſiſtance, and it was neceſſary to prevent his Eſcape, or to preſerve the Life of the Officers, (if the Priſoner attempted it,) to uſe violent Means; and the Quarrel commenced by the Fault of the Priſoner, then the Officers were not to blame: But if a Quarrel was commenced by the Officers againſt the Priſoner, who had ſubmitted to the Law, and to their Authority, and was willing to do what the Law required, namely, to pay the Debt, and they kept him in Durance only for Civility Money, uſed him ill, began the Quarrel, and fought with the Man on that Account, they ſubmitted it whether it was not Murder. They agreed that there was not any Perſon preſent at the Beginning of the Quarrel, or who continued there during the Quarrel; but from the Circumſtances and the Evidence, it would appear that the Quarrel was begun by the Officers. Indeed there were Piſtols fetch'd by the Deceaſed; but they were not deſign'd to be made uſe of to injure the Bailiffs: They were only for his Preſervation, if he ſhould be ill uſed by them. If after he had taken theſe Piſtols, he laid them aſide, and the Bailiffs took them up, and with one of them ſhot the Priſoner, he apprehended that would take off the Circumſtances that ſeemed to favour them.

The Evidence for the King.

[Thomas Hargrave, *Servant to the Deceaſed, ſworn.*]

Serj. *Cheſhire.* Tell what paſt between your Maſter and the Defendants; and be ſure ſpeak the Truth.

Hargrave.

Hargrave. My Lord, my Maſter ſent me to call a Pair of Oars to go to *Weſtminſter*, on Tueſday between Nine and Ten o'Clock, (I can't tell what Day of the Month it was;) and when I had called them, he bid me take my Hat and go along with him. When we had got two or three Doors from our Lodging, a little Man, named *Tranter*, clappp'd him on the Shoulder. [*At the Priſoners Deſire the other Witneſſes were order'd out of Court.*] And preſently after came another Man, *Reaſon*, and ſaid they arreſted him: With that my Maſter ſays, *Gentlemen, If you will go with me, you ſhall have your Money. My Wife is with Child, and I am afraid ſhe will be frighted. No, damn you, we will go with no ſuch* Minter. With that, with great Perſuaſion, my Maſter got them to go to his Lodging, and ſaid, *Fetch the Attorney, and I will pay the Money. Reaſon* ſent *Tranter* for the Attorney; and *Reaſon* went up with my Maſter, who ſaid to my Miſtreſs, *My Dear, don't be frighted; here are two Raſcals who have abuſed me in the Street.* My Miſtreſs ſaid, *Go to my Nephew.* I went, but he did not come immediately. When I returned, I went into the Room, and there was no Harm then: My Maſter was walking about the Room; and *Reaſon* ſtood with his Back to the Wall, and his Face to the Piſtols. My Maſter ſaid, *Let me ſee your Warrant: Reaſon* ſhewed it him, and he ſaid, *Wipe your Arſe with it*, and throw'd it down upon the Ground. *Reaſon* asked for Civility Money. My Maſter ſaid, *No, he would give him none, for he had not uſed him well.* At laſt *Tranter* came; I opened the Door to him, he run up Stairs: I ſtaid to ſhut the Door, and heard a Ruſtling or Noiſe; upon which I run up Stairs after *Tranter*; and I ſaw *Tranter* cloſe with my Maſter, and throw him againſt the Cloſet Door; and *Reaſon* took his Sword, and run my Maſter through. I took *Reaſon* hold of the Sword Arm, and he ſaid, *Damn me, if you don't go out of the Room, you ſhall die before your Maſter.* I heard no Piſtol all that Time. Vol. vi. p. 199.

Serj. *Cheſhire.* Did you go in after the Piſtol was ſhot off, to ſee your Maſter?

Hargrave. No; I did not ſee him till after he was carried into t'other Room.

Serj. *Cheſhire.* Did your Maſter give any Direction to fetch the Money?

Hargrave.

Hargrave. Yes; he ſaid to my Miſtreſs, *Fetch the Money, and I will pay theſe Raſcals.*

Mr. *Reeve.* Had your Maſter any Weapon?

Hargrave. No.

Mr. *Reeve.* Where were the Piſtols?

Hargrave. One was on the Table, and the other was in the Window: They were not within his Reach.

Mr. *Reeve.* You ſaw him ſtab your Maſter: Was there any Attempt to give him another Stab?

Hargrave. Yes; he went to give another Stab: I took him by the Sword Arm, and he ſaid, *Damn you, you ſhall die before your Maſter.* Upon that I went, and cried out Murder.

L. C. Juſtice. When *Tranter* came, you opened the Door, and followed him up Stairs: Did you hear before he entered the Room any Noiſe or Stroke?

Hargrave. Only two or three Words: I can't tell what they were.

Mr. *Hungerford.* What ſaid *Reaſon* when your Maſter told him he did not uſe him well?

Hargrave. He ſwore, and call'd him a great many Names, call'd him Minter and I don't know what.

L. C. Juſtice. Did your Maſter deſire them to go to any particular Place?

Hargrave. He ſaid, if they wou'd go with him to *Weſtminſter*, he wou'd pay them the Money: But they refus'd to go, and ſaid, They wou'd go with no ſuch Minter. He wou'd have had them gone with him to *Weſtminſter*, for fear of frightning his Wife: She was great with Child: With great Perſuaſion he got them to go to his Lodging.

Tranter. Did not I deſire your Maſter to ſend you for the Attorney, and he ſaid, *Damn you, you ſhall go.*

Hargrave. No; I heard no ſuch Thing.

[Heſter Gerrard, *Maid to the Deceaſed, ſworn.*]

Mr. Serj. *Cheſhire.* Tell the Court and the Jury what happen'd at Mr. *Lutterell*'s Lodgings.

H. Gerrard. I was in the Kitchen of a Tueſ-
Vol. vi. p. 200. day, and heard my Maſter return again, when he was but juſt gone out before. I ſtepp'd to the Stairs, and ſaw him come in with another Man. I heard him

him go up Stairs: I liſten'd, and I heard him ſpeak loud. I underſtood he was arreſted. I went up, and found my Miſtreſs in the Dining-Room, with my Maſter and Mr. *Reaſon*. In a little Time ſhe went out of the Dining-Room into the Bed-Chamber; my Maſter and Mr. *Reaſon* were in the Room together; my Maſter talk'd, and walk'd about the Room. I ſtaid with my Miſtreſs ſome Time, and heard my Maſter go up Stairs, and come down again immediately. Upon this I went into the Room; my Maſter had two Piſtols, and he put them on each Side of his Coat. I ask'd him, *What do you do with theſe Piſtols, if my Miſtreſs comes ſhe will be frighted.* Says he, *I don't deſign to do any Hurt.* Then he told me how they had abus'd him in the Street, and call'd him Minter. Says I, *Sir, pray lay down your Piſtols*; and he laid them both down on the Table, and had only his Cane in his Hand. I went to my Miſtreſs again; and ſhe was in her Cloſet, taking out ſome Money. She got up, lock'd the Cloſet Door, and ſat down on the Bed-Side, and was frighted. Afterwards I heard ſome Body knock at the Door; and ſtepping to the Top of the Stairs, I ſaw, I ſuppoſe, that Man, (pointing to *Tranſer*;) the Boy let him in; I ſaw him come along the Entry, and the Boy follow him. Upon that I went to my Miſtreſs, and ſaid, *There is a ſecond Perſon come; I don't like him; ſhall I ſtop him on the Stairs?* He went into the Room, and I ſaw the Boy follow him. I went in to my Miſtreſs again, and heard a Noiſe, but did not know what it was. I heard the Noiſe grow greater, and ſtepp'd ſoftly through the Paſſage, threw open the Dining-Room Door, and ſaw this Gentleman (pointing to *Reaſon*) ſtabbing my Maſter with all his Might, and he on his Back on the Floor, lifting up his Hands, as if he begg'd for Mercy. The other Bailiff had his Back towards me, ſtanding by the Side of my Maſter. I ran to the Door, and cry'd out Murder; then off went the Piſtol. I was frighten'd; for I thought they had ſhot after me; and in about two Minutes there went off another.

Mr. *Hungerford.* Could your Maſter come at the Piſtols? or had he any Thing in his Hand?

Heſter. He was upon the Ground on his Back, and his two Hands lifted up thus; and Mr. *Reaſon*

ſtabbing him upon the Ground. He ſtabb'd him upon the left Side.

Serj. *Cheſhire.* Did the Piſtol go off till after you had left your Maſter, and he was ſtabbing him?

Heſter. It was after I ſaw him, within two Minutes after. Upon my crying out Murder, the People came up Stairs.

Reaſon. Did I ſtay in the Room by myſelf, when your Maſter went up Stairs?

Heſter. Yes; you did.

L. C. Juſtice. And when he came down, he had a Brace of Piſtols?

Heſter. When I ſaw him he had them in his Hand; and when I inſiſted on his laying them down, he came and laid them down on the Table by me.

[Thomas Waters, *a Waterman, ſworn.*]

Serj. *Cheſhire.* Will you tell the Court what you know of their crying out Murder at Mr. *Lutterell*'s Lodging.

Waters. I was at the Water-Side, when Captain *Lutterell* came down to go by Water. I went down to carry him, and two Men croſs'd over the Way to him. I was gone down to my Boat to wait for him; but he not coming, I came back again; and ſeeing them go into the Houſe, I went to the Water-Side, and ſtaid there, till the Lad crying Fire, Murder, I run into the Door; and when I was about half Way up Stairs, Lord, ſays the Boy, they are murdering my Maſter. I run to the Stair-Head, and heard the Piſtol go off, and ſaid to the Boy, Is there any more Piſtols? Then I open'd the Door, and went in, and met *Reaſon* with his Sword drawn in his Hand, and as he was putting it in, it ſtuck.

Vol. vi. p. 201.

Serj. *Cheſhire.* Where was Captain *Lutterell*?

Waters. Laid down on the Floor, all in his Gore. The young Man follow'd me in. One Piſtol lay upon the Table. *Tranter* was behind *Reaſon*, and ſhew'd me his Hands, and ſaid, See how I am us'd. *Reaſon* was opening the Door: I took hold of him, and ſaid, You muſt go no further; here is Murder done. Then the Conſtable came in; and I charg'd him with them. The Captain's Sword was in the Middle of the Room broke. He lay on his Right Side with his Arm on the Chair.

Serj.

Serj. *Cheſhire.* How far was the Table off?

Waters. The whole Breadth of the Room: He lay juſt before the Fire-Place. I ſaw but one Piſtol: I came in when the laſt Piſtol went off; and I met Mr. *Reaſon*, and put him by with my Hand to come into the Room.

Tranter. What Wound did you ſee me have?

Waters. No more than in your Hand. He ſhew'd me his Hand.

L. C. Juſtice. Was the Sword in the Scabbard that was broke; and whoſe was it?

Waters. It was out of the Scabbard; and muſt be the Deceaſed's, becauſe the other had his Sword drawn in his Hand. I deſir'd the Conſtable to draw the Sword, and ſaw it bloody a good Way.

[*Mr.* Peters *ſworn.*]

Serj. *Cheſhire.* Will you tell the Court whither you was ſent for on the 17th of *October*? and by whom?

Mr. *Peters.* On the 17th of *October* laſt, I think it was in the Forenoon, about Twelve o'Clock, I was ſent for to viſit Mr. *Lutterell:* The Meſſenger told me he was expiring. I came into his Room; where I found him on his Bed in a wounded Condition, and languiſhing of his Wounds. He ſeem'd deſirous that I would pray to Almighty God for his Soul; for he believ'd he had but a little Time to continue in this World, and therefore he deſir'd to make the beſt Uſe of it. I was ready to aſſiſt him, and deſir'd him to conſider how far he might be inſtrumental in bringing this Misfortune on himſelf. I deſir'd him to conſider, that as a dying Man great Weight would be laid on his Words; therefore if he ſaid any Thing not ſtrictly true, he might involve innocent People in the Guilt and the Puniſhment; therefore I deſir'd him to lay his Hand upon his Heart, and conſider.

He told me, *As a dying Man, as he expected to be try'd for this very Fact at the Bar of Heaven, as well as the Perſons who had injur'd him, he aſſur'd me he was murder'd in a barbarous Manner.* Afterwards came in one *Church*, a Bailiff in the ſame Street, and deſir'd me to put it home to him. I did. Upon which he made me the ſame Anſwer, *That he was*

barbarouſly murder'd. He wanted Spirits, or would have expreſs'd himſelf more fully. On this I pray'd by him; and when I had done I took my Leave of him. In about an Hour afterwards I was ſent for again. When I came there, I met Mr. *Vernon* and Mr. *Haines*, Juſtices of the Peace. One of the Juſtices gave Mr. *Latterell* his Oath; and there being no Clerk there, deſir'd me to take his Words in Writing; which I did. The Words were theſe: *The Bailiffs took the Piſtols from my Table; they fir'd them twice: The fat Man drew his Sword, and run me into the Body with his Sword; and then drew my Sword, which I broke in his Hand, and begg'd for Life. I neither fir'd a Piſtol, nor made one Puſh; they both run me through. I offer'd to pay them the Money.* I think theſe are the very Words he ſaid. After this I pray'd by him again; and ſtill deſir'd that he would not lay any Thing to the Charge of People that were not guilty. I left him then, and came again a third Time; and as I was praying by him, he interrupted me, and ask'd me if it was not proper to receive the Holy Sacrament, which he was deſirous to do. I ask'd him if ever he had received the Sacrament. He told me he had. I deſir'd him to conſider; and to aſſiſt him, I put him into a Method. I told him one Thing which was neceſſary, which, perhaps, he might come into with Reluctance; and that was Charity, and forgiving his Enemies. I told him he had been hardly dealt with, I believ'd; yet it did behove him, as he dy'd a Chriſtian, to forgive them. He told me he did forgive them, and he hop'd Almighty God at the laſt Day would forgive their Indiſcretion. He died ſome Time afterwards; but then in ſo doſing a Condition, that I could not attend him to any Purpoſe.

Mr. *Hungerford.* Did he ſay who fir'd the Piſtol?

Mr. *Peters.* When I ask'd him if he fir'd either of the Piſtols, I told him one of the Bailiffs was wounded, and there were two Balls taken out of his Hand. He aſſur'd me, as he was a dying Man, he fir'd neither of the Piſtols.

Reaſon. Did not he confeſs that he had broke one of their Heads?

Mr.

Mr. *Peters.* No, nor any Thing like it; ſo far from it, that he ſaid he did not deſign to hurt a Hair of their Heads.

L. C. Juſtice. You ſay you were deſir'd to take the Examination? Vol. vi. p. 202.

Mr. *Peters.* Yes, my Lord; I did take it.

Serj. *Cheſhire.* My Lord, I apprehended we had it ready to produce; but am told to my Surprize, that Mr. *Vernon* hath it, and he is gone into the Country.

Mr. *Peters.* My Lord, there is a Copy of it in my Depoſition before the Coroner.

L. C. Juſtice. You have given an Account of the Examination of this Gentleman; firſt before the Clergyman, afterwards before two Juſtices of Peace: His Examination was taken and reduc'd to Writing. By Law, unleſs you ſhew you are diſabled to do it by ſome Accident, you muſt produce that Writing.

[Mr. *Haynes, one of the Juſtices of Peace, ſworn.*]

L. C. Juſtice. Did you take the Priſoner's Examination?

Mr. *Haynes.* My Lord, on the 17th of *October* laſt, the Priſoners were brought before me, being charg'd with the Murder of Mr. *Lutterell.* I underſtood he was not dead; and ſo Mr. *Vernon*, another Juſtice of Peace, went with me to Mr. *Lutterell*'s Lodgings, where we found him in a very weak Condition, but ſenſible. We adminiſter'd the Oath, in order to take the Examination in Form. My Hearing not being very good, Mr. *Vernon* examin'd him; but before he could perfect his Examination he fainted away, and could not go on. Then we went to my Houſe, and examined the Priſoners, and committed them. What the Deceas'd ſaid to Mr. *Vernon* and the Miniſter, I did not hear; ſo can give no Account of it.

Mr. *Reeve.* Had you the Paper?

Mr. *Haynes.* No, I had not.

Mr. *Peters.* I gave it to Mr. *Vernon*; and obtain'd it of him to ſhew the Coroner; and afterwards I gave it him again. I took a Copy of it, and examin'd it.

L. C. Juſtice. We muſt have the Original.

Mr. *Hungerford.* We hope we may read the Depoſition taken before the Coroner. This Gentleman ſays he ſaw the Examination taken in the Preſence of two Juſtices of the Peace; and the very Words of that Paper were contain'd in the Depoſition taken before the Coroner.

No Evidence can be given of an Examination, but it muſt be produc'd in Court.

L. C. Juſtice. That won't do; you have not the Examination of the Deceas'd. It is ill done of Mr. *Vernon*; he ought to have attended here, and have brought the Examination into Court; and without that, we can't arrive at the Truth in this Caſe. I doubt you muſt lay aſide all the Evidence of this Gentleman, for want of the original Examination.

Mr. *Reeve.* Suppoſe no Examination had been taken, we apprehend what he ſaid would have been proper to lay before the Jury; therefore as this Gentleman gives an Account of what the Deceas'd ſaid at another Time, (though we can't give in Evidence what he ſaid at his Examination,) yet we may give an Account of that.

L. C. Juſtice. In the Court of *Chancery*, when a Perſon is examin'd upon Oath, and gives in a firſt, ſecond, and third Anſwer, all theſe are taken but as one entire Anſwer. You are to be heard no more to it, becauſe you ought to produce it.

Mr. *Hungerford.* We have the very Confeſſion in our Briefs; and if we had thought it could not have been produced, we ſhould not have open'd it.

L. C. Juſtice. There is an Examination too in Print that ought not to be; the Perſon that did it, ought to be cenſured: Are Juries to be prepoſſeſs'd? Here is a Printed Pamphlet, the Title whereof is, *Mr.* Lutterell's *Cry for Juſtice.*

Vol. vi. p. 203.

Mr. *Juſtice Eyre.* Mr. *Peters* ſhould declare what he ſaid the firſt and the third Time; for at the ſecond Time he attended, the Examination was taken before the Juſtices.

L. C. Juſtice. It ſeems to me to be a Matter of great Conſequence, if the firſt is allow'd without producing the ſecond.

Mr. *Juſtice Eyre.* It cannot properly be call'd an Examination.

Mr. *Hungerford.* The firſt Time he examin'd him as a Chriſtian; as a Miniſter, as to the ſecond Examination:

mination. Mr. *Peters* had no more to do in it than as a Juſtice's Clerk.

L. C. Juſtice. The Examination taken before the Juſtice was to confirm the former Examination; and upon that Examination all was reduc'd into Writing.

Mr. *Juſtice Powis.* If the Examination in Writing related to what was ſaid before, and perfected that, how will they aſcertain the whole but by producing the Writing?

Mr. *Juſtice Eyre.* I don't know how to call this perfecting the former Examination: You can't call the Diſcourſe between him and Mr. *Peters* an Examination. At the *Old-Bailey*, Evidence is allow'd to be given *viva voce* of Things ſaid at other Times, though not of what was ſaid at the Time of the Examination. Vol. vi. p. 204.

Mr. *Juſtice Powis.* What does Mr. *Peters* mean by perfecting the Examination?

Mr. *Peters.* I beg your Pardon; it was not my Word.

L. C. Juſtice. Not to differ about Words: The Miniſter came to enquire of this Gentleman about the Circumſtances of his Death; afterwards the ſame Miniſter is preſent when the Juſtices of Peace come: They deſire this Miniſter to take the Examination in Writing. He does it, asking the ſame Queſtions he did before, deſigning to make the firſt Examination more authentick. Now, when the Examination of the Deceaſed before a Juſtice is taken in Writing by the ſame Perſon that enquired of him before, in order to perfect and conſummate the former Examination, whether you will not take them as one entire Account given by the Deceaſed? As there is an Examination in Writing in the Preſence of the ſame Perſon, and they give no reaſonable Excuſe why they don't produce it, there ought to be the leſs Credit given to them.

Mr. *Juſtice Eyre.* I think there is leſs Credit to be given, becauſe the Examination is not produc'd; however it is Evidence.

Mr. *Juſtice Forteſcue.* I think we ſhould allow what was ſaid at other Times to be given in Evidence, though not what was ſaid at the Time of the Examination: The firſt was no Examination,

only what Mr. *Peters* will take upon him to ſay paſs'd between them.

L. C. Juſtice. Go on with your Evidence.

Mr. *Reeve.* Mr. *Peters*, you hear the Opinion of the Court; That what paſs'd at the Writing of this Paper you muſt not take any notice of, but give an Account of what paſs'd at any other Time.

Mr. *Peters.* I told your Lordſhip when I was ſent for to viſit him the firſt Time, I found him dangerouſly ill: After I had talk'd to him ſome Time, to put him in mind of Death, I deſir'd to know how far he had been inſtrumental in bringing this Misfortune upon himſelf. He ſaid, *As he was a dying Man, and expected to be judged at the laſt Day, they murder'd him barbarouſly.* I repeated it to him again, at the Request of Mr. *Church* a Bailiff, and the laſt Time I came to him, when he receiv'd the Sacrament.

L. C. Juſtice. Did you ask him, if he had ſtruck any of the Bailiffs?

Mr. *Peters.* I did not: But I ask'd him if he had given them any Provocation. To which he anſwer'd, *He had given them no Provocation.*

L. C. Juſtice. Did he ſay he gave the Bailiff that Wound?

Mr. *Peters.* I told him one of the Bailiffs was wounded in the Hand, and it was probable he was the Perſon that diſcharg'd that Piſtol. Upon which, he aſſured me he fired neither of the Piſtols: He neither drew his Sword, or fired either of the Piſtols.

Vol. vi. p. 205.

L. C. Juſtice. What paſs'd the third Time?

Mr. *Peters.* As he was going to receive the Holy Sacrament, I begg'd of him to conſider, whether what he had ſaid was true. He ſaid, *Every Article he had ſaid, as he was a dying Man, and as he hoped to receive Benefit by the Sacrament, every Thing he ſaid was ſtrictly true.*

[*Mr.* Sparham, *the Surgeon, ſworn.*]

Mr. *Reeve.* Give an Account in what Condition you found the Deceaſed.

Mr. *Sparham.* I found him wounded under the Right Pap with a Shot. I found ſeveral other Wounds; one near the Liver, the lower Part of the eighth Rib

Rib, near the Backbone, ſeveral other Wounds, with a Sword, three or four on his Belly. Upon opening his Body, I found that the Wound with the Bullet had penetrated about nine Inches towards his Back; which Wound was mortal. I found another Wound with a Sword near the eighth Rib, three Inches and an half broad, penetrating the Thorax, and wounding the Diaphragma, which was alſo mortal. I found eight other Wounds with a Sword, about a quarter of an Inch wide each, and a quarter of an Inch deep, one near the Left Pap, four others on the Right Side of the Belly, two more on each Side the Backbone.

Mr. *Reeve.* You look'd upon two of the Wounds to be mortal, one whereof was with the Piſtol-Shot.

Mr. *Sparham.* Yes; I ſaw two Leaden Pieces taken out of his Body.

L. C. Juſtice. What ſay the Priſoners?

Reaſon. My Lord, we arreſted the Gentleman in *Surry-Street*: He deſir'd us to go to his Lodging. When we came there, ſays he, *Go and ſee for the Attorney, and I will pay the Money. Tranter* went to the Attorney for his Bill; and I went up Stairs with the Gentleman into the Dining-Room. When he came up, ſays he, *My Dear, I am arreſted, it is for Mr.* Rouſe's *Bill*; and began to look a little angry; went to his Scrutore, and took ſomething out of it; and then went up Stairs and fetch'd his Piſtols, clap'd one to my Breaſt, and threatned to ſhoot me. I was ſurpriz'd; his Lady run out of the Room, and I gave him good Words. Says he, *Sirrah, I'll let you live a little till your Partner comes back; and then I will ſend all your Souls to Hell together.* Then the Foot-Boy came back, and ſaid the Gentleman was coming. He order'd the Boy out of the Room, and one knock'd at the Door. When the Boy was gone, he clap'd his Piſtols one on one Side his Boſom, and the other on t'other; and my Partner coming into the Room he gave him a Blow over the Head. with that he cloſed in with him, and then one of the Piſtols went off, and wounded him. Then he drew his Sword, and I drew mine. And then the other Piſtol went off; which was the Occaſion of his Death. The Priſoner's Defence.

Mr.

[*Mr.* Twice, *the Attorney*, *ſworn.*]

He depos'd, That he was employ'd by the Plaintiff, Mr. *Carr*, to take out a Writ againſt Mr. *Lutterel* on an indors'd Note; which he did, and gave it to *Reaſon*; who got a Warrant upon it; and that *Tranter* told him the next Morning they had arreſted him, and came to him for a Bill of the Debt and Charges; which he gave him.

[*Mr.* Tims *ſworn*, *and the Warrant ſhew'd him.*]

He depos'd, That this was the Warrant made out on the Bill of *Middleſex*, at the Suit of Mr. *Carr*, and the Warrant and Bill of *Middleſex* were read.

[Mr. *Hickman ſworn.*]

He depos'd, That he made out the Warrant.

Mr. *Hungerford.* Here is a Witneſs in Court, one *Lucas*, can prove that *Reaſon* Shot off the Piſtol.

L. C. Juſtice. It is irregular; you come out of Time; but if my Brothers pleaſe, we will hear it.

[Conſtance Lucas *ſworn.*]

Vol. vi. p. 206. Mr. *Hungerford.* What do you know of Shooting off the Piſtol.

C. Lucas. I was oppoſite to the Captain's Lodging in *Surry-Street*, in a Room up two Pair of Stairs, and I heard a Piſtol go off. Upon that I went to the Window; and I ſaw a luſty fat Man take a Piſtol out of the Window in the Captain's Lodging up one Pair of Stairs, and let it off towards the Fire-ſide.

Mr. *Strange.* Can you take upon you to ſay it was not Mr *Lutterell*?

C. Lucas. Yes; I am ſure it was not he: He was a little Man.

L. C. Juſtice. When the luſty Man diſcharged the Piſtol, was any Body by?

C. Lucas. No Body, that I ſaw.

Mr. *Hungerford.* The Coroner's Inqueſt came into this Room, and was ſatisfied, that from thence ſhe might ſee into this Window.

Mr.

[Mr. Gifford, *the Surgeon, ſworn.*]

Mr. *Gifford.* On Tueſday, the 17th of *October* laſt, about Ten or Eleven o'Clock in the Morning, I was ſent for to a Gentleman, Mr. *Lutterell.* When I came to him, I found him ſitting on a Chair, and he lean'd back with his Shirt and Cloaths very bloody. Mr. *Sparham* was with him, in order to look to his Wound. We put him to Bed: We found a Wound about an Inch below the Right Pap by Gun or Piſtol-Shot; and we dreſſed it, and all the other Wounds we could find. I went into the Parlour, and there were the two Priſoners at the Bar; I was told one of them was wounded. Upon that I went to examine into it. Upon coming into the Parlour I examined *Tranter*, and there I found two Pieces of Balls, which were lodged in his Hand. We extracted the Balls. I found a ſmall Wound in his Wriſt, and a Razure on his Head: There was a ſmall Wound which was on the Wriſt; it ſeemed to be from a Prick, ſomething that had entered the Skin. Then I went to Mr. *Lutterell* again: As he was in a good State of Senſe, I asked Mr. *Lutterell Whether he had fir'd a Piſtol?* I asked him ſeveral Times. He denied it a firſt, ſecond, and third Time, and he uſed this Expreſſion, *I call God to witneſs, I neither fired a Piſtol, nor drew my Sword, but was barbarouſly murdered.* I was there again when Mr. *Peters* gave him the Sacrament, when he was asked the ſame Queſtion. He then anſwered, *He neither did the one, or the other.* In the Afternoon Mr. *Keat* and I went togther: He was then in a calm State, ſeem'd reaſonable, and we asked him, *Sir, You can give ſome Account of this Matter; your Reaſon and Judgment are ſtrong; I have heard that you fetch'd down the Piſtols?* He told me, *He had; but with no malicious Deſign; only he would not be forc'd out of his Lodgings.* I asked him, *If there was any Blows given?* He ſaid, *They had given him abuſive Language, which induced him to ſtrike one of them. Upon that they immediately ſeiz'd him; the luſty Man ſeiz'd him, and drew his Sword; he tumbled down, and he ſtabb'd him: He often begg'd them to ſpare his Life; the other ſaid, Damn him, draw his own Sword, and ſtab him.* Mr. *Lutterell*'s Finger and Thumb were cut,

cut, as if it was with graſping a Sword. Then he ſaid, *The leſſer Man took a Piſtol, and clapp'd it cloſe to his Breaſt; and ſhot him in the Body; and the luſty Man held the other Piſtol to his Head, and ſhot it off.* Which I the rather believe, becauſe he had ſome Powder-Spots or Marks on his Face.

Reaſon. He owned to you that he ſtruck one of us?

Gifford. Yes; but it was upon your giving ſaucy Language.

L. C. Juſtice. When you asked him upon what Account he brought down the Piſtols, what ſaid he?

Gifford. He acknowledged he had brought down the Piſtols, but with no evil Intent; but as he was willing to pay his Debts, he was not willing to be forced out of his Lodging, and be expoſed.

[Mr. Bonner *ſworn.*]

He depoſed, That he came up Stairs juſt as Mr. *Lutterell* was got to Bed, and asked him, if he had fired the Piſtol; and he anſwered, *He had no Deſign to do them any Harm, or make any Reſiſtance; but they killed him cowardly and cruelly.*

Reaſon. After he ſaid he had no Deſign to make any Reſiſtance, what followed?

Bonner. When I came out of the Room, ſays Mr. *Gifford* to me, *Mr.* Tranter *is ſhot in the Hand: It is certain Mr.* Lutterell *ſhot him in the Hand; therefore, let us go back and ask him.* We went both of us, and asked him; and he ſaid, *No; as God ſhould judge him, he did not, nor had any Deſign of doing them any Harm; but he did threaten them ſeveral Times.*

Tranter. My Lord, I have loſt the Uſe of my Thumb by the Shot.

[Blake, *the Surgeon, ſworn.*]

He depoſed, That *Tranter* was wounded in the Thumb of the Right Hand, and in his Left had a Wound in his Wriſt.

L. C. Juſtice. What was that Wound on his Head?

Blake.

Blake. It ſeemed to be done with a Cane; the Skin was broke: And Mr. *Reaſon* had a little Wound in one of his Fingers, which ſeemed to be done with the Point of a Sword.

[Thomas Hargrave, *the Boy, called again.*]

L. C. Juſtice. You ſay, when *Tranter* knock'd at the Door, you went and let him in; that you followed him up to the Dining-Room, and heard a little Buſtle before you went in; but the firſt Thing you ſaw when you came in, was *Tranter* running your Maſter againſt the Cloſet Door, and *Reaſon* pricking him with a Sword: I ask you, Whether when you was coming up Stairs before you enter'd the Room, if you did not hear a Blow? Vol. vi. p. 207.

Hargrave. I heard a Blow, but did not know who ſtruck it.

L. C. Juſtice. Have you any more Witneſſes?

Reaſon. My Lord, we have none but ourſelves: We are Officers of the Court: He aſſaulted us, and brought down his Piſtols, and ſtuck them in his Boſom.

L. C. Juſtice. Did not he afterwards take them out, and lay them on the Table?

Reaſon. No, my Lord.

Tranter. The Minute I came back, when I entered the Room, he ſtruck me over the Head with his Cane, and the Piſtol went off, and ſhot me in the Hand.

[*The Cloaths being produced, it appeared by the Hole in the Waiſtcoat, that the Wound given by the Piſtol under the Right Pap, could no Way happen by any Poſition of the Piſtols in the Boſom of the Deceaſed, by the Piſtol going off of itſelf.*]

Reaſon. My Lord, we are Officers of the Court; and what we did was for our own Security.

Mr. *Reeve* reply'd, That by the Evidence that had been produced, there was Reaſon to think Mr. *Lutterell* had given one of the Balliffs a Blow on the Head; but he ſubmitted it, whether that was a ſufficient Juſtification, King's Counſel Reply.

tion for the Officers to kill Mr. *Lutterell* in this Manner: That it was not pretended Mr. *Lutterell* fir'd either of the Piſtols; but that they were in his Breaſt, and went off themſelves. Mr. *Lutterell*, indeed, had own'd he threaten'd them; but if he did, he had not the Piſtols in his Power; one was on the Table, and the other in the Window; and the Maid, before either of the Piſtols was fired off, ſaw Mr. *Lutterell* on the Ground on his Back, and his Hands lifted up, and the Bailiffs ſtabbing him: And it appeared impoſſible that the mortal Wound he received could be given him by the Piſtol in his Breaſt. He ſubmitted therefore, upon the Whole, whether it was a ſufficient Juſtification, though they were Officers of Juſtice, and ought to be protected, ſuppoſing ſuch a Misbehaviour: Where there was no Neceſſity for it, they were not to be juſtify'd.

L. C. Juſtice. If they have done nothing but what was proper to ſecure their Priſoner, and their own Lives when they were aſſaulted, they are not guilty of Felony.

Mr. *Reeve.* We muſt ſubmit it, whether a Man ſtriking another over the Head be a Juſtification for him immediately to kill him.

Mr. *Hungerford.* My Lord, here is a Man's Life taken away by two Perſons that had a Precept from a Court of Juſtice to arreſt. The only Thing they had to do was to ſecure the Perſon, and make him anſwerable to Juſtice; and whether this could not be done without all this Outrage? whether Officers of Juſtice may execute their Proceſs with ſo much Cruelty? It amounts to as great premeditated Malice, as can be conceived. There is Malice contained in Cruelty. In *Holloway*'s Caſe there was a Provocation: But the Judge entered into the Fact, and queſtioned whether the Provocation was ſufficient to juſtify killing the Boy. And there is the Caſe of *Mawgridge*, reported by the Lord Chief Juſtice *Holt*. There was a Provocation: *Cope* had turn'd *Mawgridge* out of the Room; and yet this was not held a ſufficient Provocation; and it was a very juſt Obſervation of my Lord Chief Juſtice *Holt*'s, That when Caſes were attended with ſo much Cruelty and Barbarity, Malice ſhould be implied. It appeared here, that there were nine Wounds

Croke, Car. 131.

Keilyng's *Reports* p. 119.

Vol. vi. p. 208.

Wounds, eight beſides that with the Piſtol; and certainly two luſty Men, as the Priſoners at the Bar were, might have made him anſwerable to Juſtice without that barbarous Treatment.

Mr. *Strange*. My Lord, if Mr. *Lutterell*, at the Time they aſſaulted him with a Sword, had held his Piſtols in his Hand, and their own Lives had been in Danger, the Caſe had been different; but as they were between him and the Piſtols, ſo that it was impoſſible he could do them any ſuch Harm, they are the leſs excuſable for what they did.

L. C. Juſtice. You mentioned the Caſe in *Keilyng* You may remember there a Blow was a Provocation; and if a Blow be firſt given, it will not be Murder though Death doth enſue upon it.

The Lord Chief Juſtice, in ſumming up the Evidence, made the following Obſervations. He ſaid,

Lord Chief Juſtice's Obſervation on the Evidence. Vol. vi. p. 209.

HE ſhould have been very glad, if the Examination, that was reduced to Writing, had been produced: That Mr. *Peters*, indeed, was a worthy Perſon; but, as he ſwears upon his Memory, he might miſtake; and a Miſtake of a few Words might alter the Senſe: And it was ſtrange, that of two Juſtices, the one appear'd, and the other, Mr. *Vernon*, with whom the Examination was left, did not appear, nor had any Endeavours been uſed to have him there; and, therefore, it muſt be an Objection, That the Proſecutor had not produced the Evidence that was proper, but relied on the Memory of the Witneſs. This ſeemed to affect the Evidence given by Mr. *Peters*.

That as the Priſoners had been ſo civil on the Arreſt, as, at Mr. *Lutterell*'s Requeſt, to carry him to his own Lodging, that Circumſtance, he confeſs'd, made ſome Impreſſion on him: It was what Bailiffs were not bound to do; they were uſually rough, and not eaſy to be entreated, unleſs well paid for it; they were too favourable in truſting him in his own Lodging: And it was ſtill a greater Piece of Civility, to ſend *Tranter* for the Attorney's Bill, and leaving *Reaſon* with him alone; he might have ſent his Vol. vi. p. 210.

his own Servant. This was extreme civil Uſage, and was not often done by Men of their Character: Nay, *Reaſon* ſuffers him to go up Stairs into another Room, when his Partner was gone: This ſhews exceſſive Favour to their Priſoner, which they could not in Strictneſs juſtify: And Mr. *Lutterell*'s bringing down a Brace of Piſtols ſeemed to be an untoward Return for their Civility. Indeed the Maid-Servant depos'd, That he ſaid *he had no Malice towards them, and would not hurt a Hair of their Heads; he only brought down the Piſtols, that he might not be impoſed on:* But he did not know what he meant, when he was in Cuſtody of the Officers, and had been ſo civilly uſed, to bring down a Caſe of Piſtols, to prevent his being ill uſed: It ſeems as if he intended to affright the Officers, that they ſhould not carry him away. It was the Duty of the Bailiffs to carry him off, and he brought down the Piſtols to prevent that; and he owned, that he gave one of the Bailiffs a Blow on the Head with his Stick; and the Bailiffs ſay, in their Juſtification, that the Aſſault begun on his Side. It was ſtrange, that *Tranter*, immediately after he came back, ſhould run him againſt the Wainſcot, and *Reaſon* aſſault him with a Sword, without a Provocation. This Behaviour was not of a Piece with the other. He thought, it appeared by the Evidence, beyond Contradiction, that the Piſtols were brought down with a Deſign to prevent his being carried off, and that he did give one of the Bailiffs a Blow with a Stick.

Upon the Whole, He thought it was plain, that the Priſoners at the Bar did kill Mr. *Lutterell*; that when *Tranter* had him againſt the Wall, *Reaſon* ſtabb'd him; and when he was lying on the Floor, *Reaſon* ſtabbed him; and it appeared by another Evidence, that *Reaſon*, the fat Man, ſhot off a Piſtol; ſo that he made no doubt but the Priſoners at the Bar did give Mr. *Lutterell* thoſe Wounds of which he died. The Surgeons had depoſed, that there were eight or nine Wounds with a Sword, one of them mortal; and a Wound with a Bullet, that was mortal.

Then the Queſtion was, Whether upon this Evidence, the Defendants were guilty of Felony? And

if

if guilty, then in what Degree? whether Murder or Manſlaughter?

Bailiffs were Miniſters of Juſtice, armed with the Authority of the Law; and thoſe who reſiſted a Bailiff in the Execution of his Office, reſiſted the Law: And in executing their Warrants, and doing what was neceſſary for that Purpoſe, for the obtaining their Priſoner, or for the Security of their own Perſons, if Death enſued, the Bailiffs having the Authority of the Law on their Side, it was not ſo much as Felony: And it was neceſſary it ſhould be ſo; for without it, all their Properties would be precarious.

Here is Mr. *Lutterell* under an Arreſt, fetches down his Piſtols to prevent his being carried off, and threatens the Bailiffs; he doubted his Threatning muſt have Reference, that he threatened to to diſcharge his Piſtols, or draw his Sword upon them; and he did not only threaten them, but gave one of them a Blow with his Cane; whereupon *Tranter* runs him againſt the Wall, and *Reaſon* ſtabs him. Now, when Piſtols are brought down, Threatnings uſed, and a Blow given, the Officers are not to ſtand ſtill till they are murdered: They could not tell what Mr. *Lutterell*'s Intention was; as he had made an Appearance of Reſiſtance, and had made an Aſſault, the Jury were to conſider, whether this was not a neceſſary Defence of the Officers to ſecure their Priſoner? The Maid ſaid, indeed, when the Piſtols were brought down, at her Perſwaſion her Maſter laid them on the Table, which was an Indication, that no ill Uſe was to be made of them; and it did not appear whether one or both of them were in Mr. *Lutterell*'s Reach: But then it appeared, (I don't ſee where,) that notwithſtanding the running him againſt the Wall, he had in ſome meaſure reſcued himſelf from that Force; and there was Struggling and Throwing-down; which ſhew'd that he was not ſo in the Power of the Bailiffs, that they could be ſecure of preſerving their Priſoner, or their own Lives. That it muſt be left to the Jury, whether they believed Mr. *Lutterell* had a Deſign to reſcue himſelf; and if they thought the Bailiffs had a juſt Provocation, and were apprehenſive of loſing their Priſoner, the Law allowed them to do what was neceſſary for their own Secu-

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rity, and the Security of their Priſoner; but if they thought this was done out of Heat and Paſſion by the Bailiffs, when there was no juſt Cauſe to apprehend the Priſoner's being reſcued, then they were guilty of Felony. He confeſs'd it look'd barbarous, that when a Man was in his Blood on the Ground, they ſhould follow their Blows, giving him more Wounds; this was carrying the Thing a great Way, and look'd like Barbarity: But if Mr. *Lutterell* gave the firſt Provocation, whatever happened afterwards, if done for the Security of their own Lives, and of their Priſoner, would not make them guilty of Felony.

It appear'd, that Mr. *Lutterell* had given a Blow: Men of Honour were not to juſtify themſelves by ſaying ſawcy Language was give them; and therefore they would be their own Avengers. That to make it Murder in the Bailiffs, it muſt appear to be done maliciouſly, and without Provocation: That Blows had always been allowed to be Provocations; and in this Caſe it was accompanied with fetching down Piſtols, and threatening the Bailiffs what he would do; and if ſo, the Bailiffs would not be guilty of Murder, but Manſlaughter: That they were to aſſert the Authority of the Bailiffs; but then they muſt not encourage the Bailiffs on a few angry Words, immediately to fall into a Paſſion, and take away the Life of a Man. It appear'd, that a Blow had been given under untoward Circumſtances, after the Bailiffs had been threatened with a Deſign to prevent his being carried off by them; and if ſo, the moſt they could make of it would be Manſlaughter.

The Priſoners found guilty of Manſlaughter.

The Jury being withdrawn, returned about an Hour afterwards, and brought in their Verdict, That the Priſoners were both guilty of Manſlaughter. Whereupon they pray'd the Benefit of their Clergy, and were immediately burnt in the Hand.

The

The TRIAL *of* JOHN WOODBURNE, *of* Bury St. Edmund's, *in the County of* Suffolk, *Labourer*; *and* ARUNDEL COKE, *alias* COOKE, *of* Bury St. Edmunds *aforesaid, Esq*; *at the Assizes held there on* March 13. 1721.

The Indictment sets forth,

THAT the Prisoners not having the Fear of God before their Eyes, &c. after the 24*th* of *June*, 1671. *viz.* on the First of *January*, 8 Geo. at *Bury St. Edmund's* aforesaid, did, on Purpose, and of Malice forethought, and by lying in Wait, make an Assault unlawfully and feloniously upon *Edward Crispe* Gent. and that the Prisoner *John Woodburne* with a Bill, which he then had in his Right Hand, did on Purpose, of Malice forethought, and by laying in Wait, slit the Nose of the said *Edward Crispe*, with an Intent, in so doing, to disfigure the said *Edward Crispe*; and that the Prisoner *Arundel Coke*, at the Time of committing the said Felony, on Purpose, and of his Malice forethought, and by lying in Wait, was unlawfully and feloniously present, aiding and abetting the said *John Woodburne* to commit the said Felony, against the King's Peace, and the Statute in that Case made and provided. The Indictment. Vol. vi. p. 212.

Mr. *Lee*, of Counsel for the King, opened the Indictment; and afterwards Mr. Serjeant *Selby*, another of the King's Counsel, *pro hac vice*, opened the Evidence: The Prisoners, he observ'd, were indicted upon the Statute of 22 Car. II. the one for maiming and disfiguring of *Edward Crispe*; and the other for abetting that Fact, which, by the Statute, was made one and the same Offence: That his Majesty, as the Father of his People, Mr. *Lee*. Mr. Serjeant *Selby* Counsel for the King, open'd the Evidence. Vol. vi. p. 213

and for their Safety, had been pleas'd particularly to regard this Proſecution for ſo horrid and bloody an Aſſaſſination; and though it was difficult to ſtand in that Place without the greateſt Tenderneſs for their Fellow-Creatures, yet thoſe Men who had diveſted themſelves of all Humanity, ceaſed to be ſuch. It was Cruelty to the King's People not to ſtand up againſt them, ſo far as was conſiſtent with Law and Juſtice: Their Proſecution was become the common Concern of Mankind; for ſo long as theſe Priſoners had a Being here, the Life of every Man was precarious, and but at the Will of ſo infernal a Contriver as the one, and ſo helliſh an Executioner as the other: That the firſt Witneſs they ſhould produce was Mr. *Criſpe* himſelf, who, by a particular Providence, had ſurviv'd this horrid Attempt, and was preſent in Court to give Evidence of it.

[*Here the Serjeant gave an Abſtract of the following Evidence.*]

Mr. Serjeant *Branthwait*, who was alſo Council for the King on this Occaſion, obſerv'd, That by the Stat. 22 *Car.* II. if any Perſons, on purpoſe, and of Malice aforethought, and by lying in wait, ſhould unlawfully cut out or diſable the Tongue, put out the Eye, ſlit the Noſe, *&c.* with an Intention in ſo doing to maim or diſfigure, the Perſons ſo offending, their Counſellors, Aiders, and Abettors, knowing thereof, were Felons without Benefit of Clergy: That the Fact the Priſoners were indicted for, was attended with ſuch Circumſtances of Inhumanity and Baſeneſs as cou'd not be paralell'd, as wou'd appear by the Evidence. [*Here the Witneſſes were call'd.*]

[*Mr.* Edward Criſpe *ſworn.*]

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The Evidence for the King.

Serj. *Selby*. Mr. *Criſpe*, give an Account of the whole Matter to the Court.

Criſpe. On New Year's Day laſt I was invited to ſup at Mr. *Coke*'s; and being there before Supper, he propos'd to me to go to Mrs. *Fanny Monk*'s. We ſupp'd about Seven; and after Supper, about Ten o'Clock, he call'd me out of his Parlour. I follow'd him. We went into the Church-Yard. It

It was then very dark, the Moon did not shine. He took three Turns before the House where Mrs. *Monk* dwelt; then he stood still, and hollow'd. I was afraid, and made up towards the Wall, but in a Quarter of a Minute some Body came behind me, and knock'd me down. I cannot tell what was done to me afterwards, for on that Blow I lost my Senses. After some Time I came to my Senses, and return'd to Mr. *Coke*'s, where I was ready to faint and die. They found me very much wounded.

L. C. Justice. Was Mr. *Coke* by when the first Blow was given you?

Crispe. Yes, he was.

Coke. Do you remember that you saw me?

Crispe. You were close by me when I was knock'd down.

[*Mr.* Brown *sworn.*]

Serj. *Selby.* I think you are a Relation of Mr. *Coke*'s?

Brown. Yes, Sir; I married his own Sister, and he married Mr. *Crispe*'s Sister. A Day or two before last New Year's Day, I and my Wife and Daughter were invited to sup with Mr. *Coke*; and accordingly we went. I came about Six o'Clock, and found Mr. *Coke* and Mr. *Crispe* drinking a Glass of Wine in the Parlour before Supper. The Women were above Stairs. I sat down with them; and we three staid in the Parlour till Supper Time: When Supper was ready, we went up Stairs. After Supper, between Eight and Nine, we three came down into the Parlour again. Some Time after *Coke* went out of the Room, and then came back and beckon'd to Mr. *Crispe*, who follow'd him out of the Room. Mr. *Coke* was gone about ten Minutes, and then return'd. He seem'd to be out of Breath, as if he had walk'd faster than ordinary. He drank a Glass of Wine to me; and after he had sat some Time he went out of the Room. I heard a Noise up Stairs; and being told my Daughter was ill, I went up, and in a little Time came down again into the Parlour, where I found Mr. *Coke*. I ask'd him what was become of Mr. *Crispe*, he told me he believ'd he was gone home in the dark. In about two or three Minutes after Mr. *Crispe* came

in very much wounded and bloody. I was ſo ſurpriz'd, that I could not take particular Notice of him.

Mr. *Raby*. How long was it from *Criſpe*'s going out, to his coming in again?

Brown. It was near half an Hour.

Serj. *Selby*. Did Mr. *Coke* ſee Mr. *Criſpe* when he came back to his Houſe?

Brown. Yes; and ſeem'd to be in a great Conſternation.

Mr. *Raby*. Pray Mr. *Criſpe* would any Eſtate have come to Mr. *Coke* by your Death?

Criſpe. In caſe I had died, one hundred Pounds *per Annum* would have come to his Wife, as one of my Siſters. I have no Children: My next of Kin are three Siſters, one of which is Mr. *Coke*'s Wife.

[*Mr.* Sturgeon, *the Surgeon, ſworn.*]

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Serj. *Selby*. What do you know concerning the wounding Mr. *Criſpe*?

Sturgeon. I was ſent for the Firſt of *January* laſt, about Eleven at Night, to Mr. *Criſpe*, who was at Mr. *Coke*'s Houſe. I found him very much wounded, and in a weak Condition. He had loſt a great deal of Blood. I examin'd his Wounds: One Wound begun at his right Ear, divided the fleſhy Part of his Cheek, and ended on his Upper-Lip, juſt under his Right Noſtril: The Fleſh was all divided, and the Jaw left naked. Another Wound divided the Right Side of the Noſtril, and made an oblique Croſs over the Wound, and ended near the Right Under-Jaw.

Serj. *Selby*. Was his Noſe ſlit?

Sturgeon. The Noſe was cut from without into the Noſtril: The Edge of the Noſe was not cut through, but there was a Cut or Slit in the Noſe that went through. I ſew'd it up; it was, indeed, but with one Stitch; it is yet viſible; and the Noſe was cut through. There was another deep Wound under the Chin, that reach'd from one Jaw to the other; and another Wound, that began at his Chin, croſs'd the Left Under-Jaw, and tended towards his Ear. There was alſo a ſmall Wound on his Left Cheek; another on his Upper-Lip; and another on his Left Temple. There were ſeven diſtinct Wounds;

and

and I take it every one of the ſeven Wounds had a diſtinct Blow.

Serj. *Selby.* With what Inſtrument did you apprehend thoſe Blows were given?

Sturgeon. It was cut ſo clean, that I thought it was done either by a Knife or Razor.

L. C. Juſtice. Let the Jury ſee Mr. *Criſpe's* Wounds.

[*Here his Face and Wounds were ſhewn to the Jury.*]

[Charles Willet, *the Conſtable, ſworn.*]

Serj. *Branthwait.* What do you know of *Woodburne's* Confeſſion?

Willet. After *Woodburne* was committed, I was with him, and ask'd him whether he was concern'd in the wounding of Mr. *Criſpe.* He ſaid he was; and that he ſtruck *Criſpe* three or four Blows before *Coke* left him. He ſaid further, that he was walking up and down in the Church-Yard when *Coke* whiſtled to him; and on that Signal he went and aſſaulted Mr. *Criſpe.*

Serj. *Branthwait.* Did he ſay where he waited before the Fact was done?

Willet. He told me he was deſir'd by Mr. *Coke* to be up and down in the Church-Yard about Nine o'Clock that Night; and it being a cold Night, *Coke* gave him a Bottle of Brandy, and told him, he could not tell what Time *Criſpe* would come home; but deſir'd him to be ready, and to ſtay, let it be never ſo long.

Serj. *Branthwait.* Did he tell you with what Inſtrument he did it?

Willet. He ſaid he did it with a Hook, or Bill, that was new ground for the Purpoſe, and it lay in his Houſe on the Right Hand of the Door. I went according to his Direction, and found it, and brought it him; and he ſaid that was the Hook, that I have now in my Hand.

[William Wetherell, *the Gaoler, ſworn.*]

Serj. *Raby.* Give the Jury an Account of what you know of this Matter.

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Wetherell. The Day after Mr. *Coke* was committed to me, he ſent for me to his Chamber, where his Wife was crying, and in great Diſorder, as he ſeem'd to be likewiſe. She was deſiring her Husband to diſcover. When he came to himſelf, he told me, that he and *Woodburne* had had a Deſign to murder Mr. *Criſpe*, and had attempted it ſeveral Times, and deſir'd me to go and ſecure *Woodburne*. I went to the Alderman, and told him of it; and he gave me the like Orders. Coming from the Alderman, I met Mr. *Coke*'s Man, who ask'd me whether I had found him. I ask'd him what he meant, thinking he had been ignorant of his Maſter's Confeſſion; but he ſaid his Maſter had diſcover'd it to him, and had ſent him to take up *Woodburne*; and whilſt we were talking, we ſaw *Woodburne* coming up; and deſiring *John Carter*, a Smith, to aſſiſt us, we took *Woodburne*.

L. C. Juſtice. Did Mr. *Coke* confeſs any Thing to you concerning this Fact?

Witherell. Yes; he told me ſeveral Times, that he had a Deſign to murder *Criſpe*; and that he imploy'd *Woodburne*, and deliver'd *Criſpe* into his Hands. He told me alſo, that it was done with a Hook; and that he bid *Woodburne* cut his Weaſand or Windpipe; and that if *Woodburne* had not been a cow-hearted Dog, he would have done ſo, and ſecur'd *Criſpe* from telling Tales.

Mr. *Raby.* Did *Coke* tell you how he effected this?

Wetherell. He ſaid he called Mr. *Criſpe* out of his Houſe, went into the Church-Yard with him, and there he delivered him into *Woodbourne*'s Hands; and when *Woodburne* ſtruck him, *Coke* ſaid he went away immediately.

Mr. *Raby.* What have you heard *Woodburne* ſay concerning this Fact?

Witherell. I heard *Woodburne* ſay that he and *Coke* had lain in wait ſeveral Times, and at ſeveral Places, to murder Mr. *Criſpe*.

Mr. *Raby.* Did he give an Account what he did at this Time to Mr. *Criſpe*?

Witherell. Yes; he ſaid he ſtruck him a Blow with his Hook; and not ſtriking him quite down, he gave him a ſecond Blow, which did: And that *Criſpe*, as he was falling, (though never uſed to

ſwear

ſwear,) cried out, *God damn him*; and that then it went to his very Heart to think that he ſhould kill a Man with an Oath in his Mouth. He ſaid he gave him ſeveral Blows, and thought he was dead.

[Robert Moone *ſworn.*]

He depoſed, That about three Years ſince Mr. *Coke* ſent for him, and told him, *He wiſhed Mr.* Criſpe *out of the World: He was a good-for-nothing Fellow. His Wife had a Trick of playing away his Eſtate, and he wiſh'd ſome Body would knock him on the Head.* Whereupon the Deponent demanded, what Advantage that would be to him: *Coke* anſwered, *A very good Eſtate*; and, after a little Time, ſaid, *he did not value giving ten or twenty Guineas to knock him on the Head.* And the Deponent reply'd, *He would not kill the greateſt Villain in the World for ten ſuch Towns as* Bury.

Mr. *Lee.* How came you to remember this?

Moone. When I heard this Fact was committed, it came freſh into my Memory.

[Carter, *a Blackſmith, ſworn.*]

He depoſed, That *Woodbourne* came to him on the Friday before *New-Years-Day*, and told him his Maſter *Coke* wanted to ſpeak with him; that the Deponent went to *Coke*'s Houſe thereupon, an he ſent for him up into his Chamber; and *Coke* ask him, *How he went on? That he heard the Deponent had no Iron or Coals, and was afraid of a Gaol; but he had a Thing in Agitation, that would make a Man of him as long as he lived:* And asked him, *If he could keep a Secret?* To which the Deponent anſwered, *As well as any Body, to ſerve himſelf and his Friend.* Then *Coke* ſaid, *Do you think you could cut five or ſix Mens Heads off, without Scruple of Conſcience?* The Deponent anſwered, *That was too much for a Man's Conſcience to bear. Coke* anſwered, *Do you ſcruple ſuch a Thing as that? There are Men that have done ten Times worſe. I ſuppoſe you mean the South-Sea Gentlmen,* anſwered the Deponent. *Yes,* ſaid *Coke*; *They have ruin'd Families, and beggar'd Gentlemen: To cut Mens Heads off, is but a Trifle to it*; and asked the

the Deponent, *If he could not cut off one Man's Head*? He anſwering *No*; *Coke* ſaid, *If he would not cut off a Man's Head, and lay it down upon the Table before him, he was not for his Turn.* That *Coke* afterwards gave him a Glaſs or two of Brandy, and bid him go home and conſider of it two or three Days; *and if he could cut off a Man's Head without Scruple of Conſcience, he ſhould have Plenty of Gold and Silver, and any Thing elſe he asked.* The Deponent anſwered, *He needed no Conſideration, he could not do it.* Then *Coke* bid him ſend *Woodburne* to him; and he ſent him in to Mr. *Coke*.

Serj. *Selby*. Did he ſay any Thing to you about *Criſpe*?

Carter. I live in a Houſe of Mr. *Criſpe*'s; and Mr. *Coke* was formerly his Steward; *Woodburne* acted under him. Mr. *Coke* ſaid, *He heard my Houſe was out of Repair; That it would be his after Mr.* Criſpe; and asked, *If I ſhould not like it better for him to keep it in Repair, as he had done before*?

Vol. vi. p. 217. Serj. *Selby*. I think, my Lord, we have ſufficiently proved Mr. *Coke* and *Woodburne* to be guilty, not only within the Intention, but the Letter of the Statute of 22 *Car.* II. upon which they ſtand indicted. We have proved the Malice premeditated and forethought; the Intention to maim and disfigure, by ſlitting the Noſe, (for Mens Intentions were to be conſtrued by their Actions;) and the Maiming and Disfiguring accordingly; and that Mr. *Coke* was privy thereto, and the Aider and Abettor of the Offence: And I can't doubt but the Gentlemen of the Jury will find them both guilty; in which they will have the Suffrage of all Mankind.

Vol. vi. p. 218. *L. C. Juſtice. Woodburne*, What have you to ſay for your ſelf?

Woodburn's Defence. *Woodburne*. May it pleaſe your Honour, my Lord, the firſt Time that *Coke* began with me about this Matter, was on a Wedneſday in laſt Barley-Harveſt. He ſent for me to mend his Copper; and after I had done it, he bid me go to the further End of the *Mill-Lane*, and there he muſt ſpeak with me; and which came firſt, ſhould ſtay for the other. I was there before him. When he came, he was on Horſeback, and his Horſe kicked about in a furious Manner, that the People took Notice of it. When they were gone, he told me that he had a Thing for me to do, but

but not to be done preſently; and that if I did it, I ſhould want for nothing. I ask'd him what it was: He ſaid, about Mr. *Criſpe*, to ſet him aſide, that is, to kill him: But he ſaid it was not to be done preſently; ſo he put his Hand in his Pocket, and gave me Eighteen-Pence. I told him I never did any ſuch Thing in my Life: I could not do it. Said he, it is not to be done preſently; we have Time to conſider. A while after he ſent for me again; and asked me, whether I had conſidered of it. I told him, I could not do it. Said he, we muſt ſet *Criſpe* aſide; for Mrs. *Criſpe* hath got a Trick to play, ſhe will make away what there is for me and my Child. I ſaid, I never did any ſuch Thing; I could not do it; and deſired him to forbear. I went away, and left him in his Chamber. Within a while after he came to my Houſe: He ſaid, *John*, what is the Reaſon you can't do this for me? Said I, I cannot do it. Said he, what ſignifies it, I would do it for you. I ſaid, I could not do it. Then he went away very uneaſy; and in a Week or Fortnight ſent for me again to his Chamber, and there was at me again. I told him, I could do no ſuch Work. Said he, why can't you do this Work? I have been a good Maſter to you; I made myſelf look little to bail you, when you were in Gaol. I turned about, and cried. Said he, what makes you cry? Your crying ſignifies nothing; the Money that I ſhall give you, will do you and your Family a Kindneſs. Said I, I can do no ſuch Thing. Said he, it ſignifies no more the killing of him, than to kill a Dog; for they do no good with what they have. Yes, ſaid I, Mr. *Criſpe* is a very good Maſter; I work'd for him, and his Father before him; and ſo I went away. Afterwards my Wife died three Days before *Gun-Powder Treaſon* laſt: She was buried on that Day; and being very poor, I ſent my Daughter to deſire a little Money of him, to have the Bell tolled for my Wife; but he ſent me none. My Wife was buried on a Sunday; then on the Monday he ſent his Boy for me. I went down to him, and when I came, I fell a weeping for the Loſs of my Wife, and having ten Children. Said he, what makes you cry? You muſt pull up a good Heart; though your Wife be dead, you may have Friends: Here is that which will do you a Kindneſs hereafter. Said I, I

am

am very ſorry for the Loſs of my Wife. Said he, what ſignifies that, ſhe was carried well into the Church, and is no doubt happy: She is gone before you; we muſt all go in our Time. I was a Friend to you in her Illneſs: I ſent her a good Doctor at my own Charge. This twenty Pounds that I will give you, will be a brave Eſtate for you.

L. C. Juſtice. What were you to have this twenty Pounds for?

Woodburne. It was to kill Mr. *Criſpe.* He told me that I muſt ſet aſide Mr. *Criſpe:* He offered me twenty Pounds to do it; but I then refuſed it. On Monday, *New-Year's-Day*, in the Morning, *Coke* ſent his Boy for me to come to him; and between Eight and Nine in the Morning, I went to him: He was in his Green-Room. Now, ſaid he, *John*, we ſhall have the faireſt Opportunity to kill Mr. *Criſpe*. I told him I was loth to do it; it was very cold, and I had an Ague. Said he, I will give you that which ſhall warm you. He went to his Cloſet, and gave me out of the Bottle that he uſed to carry in his Pocket half a Pint of Brandy; and told me, that happen how it will, I muſt not come near his Houſe any more that Day, leſt afterwards there ſhould be ſome Suſpicion; but, ſaid he, whether Ague, or not, you muſt be at Mr. *Morrice's* Porch, which is in the Church-Yard, about Eight o' Clock in the Evening. I went there between Eight and Nine: About Nine *Coke* came out, and gave me a Whiſtle. On that I went up to him: He told me Mr. *Criſpe* was very jolly, and he believed it would be late before he came out. I told him, I did not care to ſtay. Said he, you muſt ſtay now: This is the Time that will do it. I ſtay'd till Ten o' Clock. Then he came to me again in Mr. *Morrice*'s Porch, and told me, that he believ'd *Criſpe* would not go till Eleven o'Clock; but the later the better. Then he went from me again; and a little Time after Ten *Coke* and *Criſpe* came out together; and on *Coke*'s Whiſtling, I came up to them. *Criſpe* was then before, and coming to get againſt the Wall. I came up to *Coke*. He bid me have a Care, not to hit him inſtead of *Criſpe*, being very dark; ſo he took me by the Sleeve to lead me up to *Criſpe*; and ſaid to *Criſpe*, Brother, ſtand ſtill. On that I hit him two Strokes with my Hook. Though I never heard him ſwear before, yet he now

ſwore,

ſwore, *God damn him.* On that *Coke* ſaid, What! doth he ſwear? Secure him; down with him. He ſtood by him till I gave him ſeveral Blows, and then he went away. *Coke* deſired me to take away his Watch; for, ſaith he, as to his Money, he don't carry above Half-a-Crown, or three Shillings in his Pocket; and when I go to *London*, I will ſell the Watch for you.

L. C. Juſtice. What *Woodburne* ſaith againſt *Coke*, is no Evidence againſt him, and ſhou'd not have been mention'd; but what he ſaith in relation to himſelf before the Fact, is ſo twiſted with *Coke*, that without the whole it is not ſo intelligible as to himſelf: However, the Jury are to take notice, that what *Woodburne* ſaith is only Evidence againſt himſelf, and not againſt Mr. *Coke*. When you had given him thoſe Blows with your Hook, what did you next?

Woodburne. I began immediately to reflect on what I had done; and went to my own Houſe, where I was about to take a Line and Hang my ſelf. Here are my two Daughters, I deſire your Lordſhip wou'd hear them.

[Anne Woodburne *ſworn.*]

She depos'd, That on *Wedneſday* before *New-Year's-Day*, *Coke* ſent his Boy for her Father twice: That he was ſick a Bed of an Ague, and refus'd to go then; but on *New-Year's-Day*, being *Friday*, he went; and came home again. That about Six the ſame Evening her Father went out with a Hook in his Hand, and ſaid he ſhould not be at home till Eleven or Twelve at Night; and if any Body came for him, he bid them take no notice he was not at home. That they thought he took his Hook to cut ſome Wood: That when her Mother died, ſhe went to Mr. *Coke*, to borrow five Shillings, to have the great Bell toll'd for her; but *Coke* ſaid, *What ſignified the Ringing of the Bell, her Soul wou'd be never the better for it? But if her Father wou'd do what he deſir'd, he ſhou'd have five Times five Shillings.*

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[Sarah Woodburne, *the other Daughter, ſworn,*]

She depos'd, That *Coke* frequently ſent for her Father at all Times of the Day and Night, and often came

came to him; and they walk'd together in the Back-ſide; and after the Fact, *Coke* ſent his Boy for her Father; and the Boy ſaid, They muſt not go together, becauſe People would take notice of them.

L. C. Juſtice. Have you any Thing more to ſay?

Woodburne. This Day nine Weeks, being a Week after the Fact was committed, *Coke* ſent for me, and ſaid, John, *I wiſh you had done the Thing I order'd you; but you have been before Alderman* Wright *and the Recorder, and have told your Story well; but hold you faſt, they will examine you again.*

L. C. Juſtice. This is ſubſequent to the Fact, and is not Evidence againſt *Coke*. If you *Woodburne* have done, Mr. *Coke*, What have you to ſay for your ſelf?

Coke's Defence. *Coke.* My Lord, I am much aſhamed, and very unable to defend myſelf: I am aſhamed to think I ſhould be concerned in ſo heinous a Crime againſt Mr. *Criſpe*'s Life: I am even confounded at it. It is indeed a very great Crime, and I know not what to ſay for myſelf; but *Woodburne* has aſſerted againſt me ſeveral Things that are falſe. When I firſt ſpoke of this Matter to him, he ſaid, *He ſhould value it no more than the cutting off the Head of a Dog.* I did indeed go out with *Criſpe* that Night; but I was not near him when *Woodburne* ſtruck him, but retreated to my own Houſe in a Moment. My Lord, there may a Point of Law ariſe on the Statute on which I am indicted, with regard to my Intention.

L. C. Juſtice. Your Intention is Matter of Fact: It muſt be tried by the Jury, whether your Intent was to maim and disfigure; if any Point of Law ariſe, you ſhall have Counſel to ſpeak to it: But whether you ſlit *Criſpe*'s Noſe with an Intention to disfigure him, is Matter of Fact.

Coke. My Intent was to kill Mr. *Criſpe*, and not to maim or disfigure him.

L. C. Juſtice. Suppoſe your Deſign was to kill; yet your Deſign might be likewiſe to maim; and this the Jury muſt try.

Coke. This is a very penal Statute; and I cannot argue it myſelf. I hope your Lordſhip will aſſign me Counſel. This is the very firſt Indictment that ever was upon this Statute.

L. C. Juſtice.

L. C. Juſtice. What do the King's Counſel ſay to it?

Serj. *Selby.* After ſo full an Anſwer as your Lordſhip has given, it is needleſs to ſay any Thing. *Woodburne* cou'd not intend to kill him with ſuch an Inſtrument, without intending to maim him firſt; and therefore if there were two Intentions, and but one executed, there was no Pretence to ſay, That what was executed, was not intended. Mr. *Coke* ſays, There never was an Indictment before upon this Statute; if not, it muſt be becauſe no Man before ever thought of being guilty of ſo horrid an Action.

The Lord Chief Juſtice, on ſumming up the Evidence, obſerv'd, That the Queſtion on this Indictment was, Whether *John Woodburne* did, on purpoſe, and of Malice forethought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention to maim or disfigure him therein? And whether *Arundel Coke* was feloniouſly preſent at the Fact, aiding and abetting *Woodburne* in the Commiſſion and Perpetration of it?

Vol. vi. p. 220. Lord Chief Juſtices Obſervations on the Evidence.

[*Here the Chief Juſtice repeating the Evidence already given, afterwards obſerves*;] Vol. vi. p. 221.

THAT *Woodburne* in his Defence did not deny the Aſſaulting and Wounding of Mr. *Criſpe*; but inſiſted, that what he had done was by the Solicitation and Procurement of Mr. *Coke*, which was no Juſtification or Excuſe; for no Man was to obey the unlawful Commands, or hearken to the illegal Advices of any other Perſon whatſoever. That the Defence *Coke* had made, which wou'd ſerve alſo for *Woodburne*, was, That they intended to murder and not to maim; and if they did maim, it was with an Intention to kill, and not to disfigure.

That this Attempt on Mr. *Criſpe* was deſigned, malicious, and by lying in wait, the Evidence was very ſtrong. There was alſo very ſtrong Evidence given, that the Noſe of Mr. *Criſpe* was ſlit by *Woodburne*, and that *Coke* was preſent in the ſame Deſign with *Woodburne:* But what was chiefly inſiſted on, by way of Defence, was, That the ſliting of Mr. *Criſpe*'s Noſe was not with an Intention in ſo doing to maim or disfigure him; and if it was not Vol. vi. p. 222.

not with that Intent, then the Priſoners wou'd not be guilty upon this Indictment.

That in other Felonies, as well as this, it was the *Intent* of the Party that made the Crime: Burglary was the breaking open a Houſe in the Night Time, with an *Intent* to commit a Felony; though no Felony be committed, yet if there was *Intent* to do it, it was Burglary; which Intent was to be tried by the Jury. Larceny or Theft was the taking away another Man's Goods with an *Intent* to ſteal; if it were without ſuch an Intent, it would only be a Treſpaſs, and no Larceny; but whether it was with ſuch an Intent, or not, was a Matter of Fact to be enquired into and determined by a Jury. The Intent was ſo neceſſary in all Felonies, that a Perſon who had no Intent or Deſign, as a Madman, Lunatick, Infant, *&c.* cou'd not commit Felony for that very Reaſon, becauſe he cou'd not have any Intent or Deſign in his Actions.

And the *Intent* of the Party was to be diſcover'd by the Facts themſelves; by the precedent Concomitant and ſubſequent Circumſtances of the Facts; by the Manner of doing, and the like.

What Homicides are Felony, and what not.

There were ſome Caſes where an unlawful or felonious Intent to do an Act, might be carried over to another Act, done in Proſecution thereof; and ſuch other Act would be Felony, becauſe done in Proſecution of an unlawful or felonious Intent: As where a Man ſhoots at Wild Fowl, wherein no Man had a Property, and by ſuch ſhooting, happens unawares to kill a Man; this Homicide was not Felony, but only miſadventure or Chance Medley, becauſe it was an Accident that happen'd in the doing of a Lawful Act: But if this Man had ſhot at a Tame Fowl, wherein another had Property, but not with Intention to ſteal it, and by ſuch ſhooting had accidentally kill'd a Man; he would then have been guilty of Manſlaughter, becauſe done in Proſecution of an unlawful Action, *viz.* committing a Treſpaſs on another's Property: But if he had an Intention to ſteal this Tame Fowl, then ſuch accidental killing of a Man would have been Murder, becauſe done in Proſecution of a felonious Intent, *viz.* an Intent to ſteal. So a Man of Malice intends to burn one Houſe; and in execution thereof happens to burn another Houſe: This is a malicious

and

and felonious burning of this other Houſe, becauſe ſprung out of a malicious and felonious Intent. The like might be inſtanc'd where Poiſon was intended to be given to one Perſon, and another takes it, and eats it, and thereby dies. And there were other Caſes of the like Nature, where Actions done in Proſecution of felonious Intents, participated of the Nature of their Original from whence they ſpring.

That the Indictment on this Statute was for a certain particular Intent, for purpoſely, malicioufly, and by lying in wait, ſlitting Mr. *Criſpe*'s Noſe, with an Intention in ſo doing to maim or disfigure. As to the Fact of ſlitting the Noſe, that was directly and poſitively ſworn; there cou'd be no doubt but it was an unlawful Slitting; but the Defence the Priſoners made, was, That if they did ſlit the Noſe, it was with an Intention to kill, and not with an *Intention* to maim or disfigure. Now if the Intention was to murder, they were to conſider whether the Means made uſe of to accompliſh that Murder, and the Conſequences of thoſe Means, were not in the Intention and deſign of the Party; and whether every Blow and Cut, and the Conſequences thereof, were not intended, as well as the End for which it was alledg'd thoſe Blows and Cuts were given. Vol. vi. p. 223.

And if they were ſatisfied on the Whole, that *Woodburne* did on Purpoſe, and of Malice forethought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention in ſo doing to maim or disfigure; and that *Arundel Coke* was felonioufly preſent at the Commiſſion of this Fact, and aiding and abetting therein, they wou'd find them guilty: But if this was not found to their Satisfaction, they were to acquit them.

[*The Jury being withdrawn, return'd about half an Hour afterwards, and brought in their Verdict, that the Priſoners were* Guilty. The Priſoners found Guilty.

Mr. *Coke*. I deſire to know of your Lordſhip, whether the Noſe can be ſaid to be ſlit, within the meaning of the Statute, when the Edge of it was not cut through?

L. C. Juſtice. 'Tis true; the Edge of the Noſe was not ſlit, but the Cut was athwart the Noſe, which ſeparated the Fleſh of the Noſe, and cut it

quite through into the Noſtril. This I take to be a Slitting of the Noſe; and the Surgeon ſwore it.

On *Wedneſday* the 14th of *March*, the Priſoners were brought into Court to receive Sentence; when it being demanded what they had to ſay why Judgment of Death ſhould not be paſs'd upon them, *Coke* ſaid,

Coke moves in Arreſt of Judgment.

THIS was a very penal Statute, and conſequently, by the known Rule, not to be carried beyond the expreſs Letter of it. That no Crime, of what Nature or Magnitude ſoever, cou'd fall within the Purview of it, but ſuch as was identically the ſame, in every Circumſtance, with that deſcrib'd by the Words of the Statute itſelf.

Vol. vi. p. 224.

That all the Circumſtances deſcrib'd by the Statute, muſt concur to conſtitute the Crime: And here the Intention to maim and diſfigure was not prov'd. Nor was it an Objection to ſay, That the Crime which was prov'd by the Evidence, was much worſe than that which was deſcrib'd by the Statute; for if it was worſe, it cou'd not be the ſame. That at Summer Aſſizes at *Dorcheſter*, *Anno* 1712. a Woman was indicted before Mr. Juſtice *Eyre*, for the Murder of another Woman; and upon the Evidence it appear'd, that the Perſon murder'd was her Miſtreſs; which made the Crime Petty Treaſon; and the Judge directed this Matter to be found ſpecially: And upon Conference with all the Judges it was held, ſhe ought to be acquitted upon this Indictment, as ſhe accordingly was; and afterwards indicted for Petty Treaſon, and convicted and executed thereupon.

And another Caſe or two were cited; but were not thought material by the Court.

Vol. vi. p. 226.

L. C. Juſtice. I do agree with the Priſoner that this is a penal Law, and not to be extended by Equity. That he that is guilty within this Statute, muſt be guilty of all the Circumſtances within it; and if any one of the Circumſtances preſcrib'd by the Statute be wanting, he is not Guilty: And therefore in all thoſe Caſes put by you, if any one of the Circumſtances preſcrib'd by the Statute be wanting in any one of them, ſuch Caſe is out of the Statute: But whether all the Circumſtances requir'd by the Statute did not concur in your Caſe,

The Priſoners Objections overruled.

Vol. vi. p. 227.

was

was a Matter of Fact, which the Jury, who are the proper Judges, have tried, and on ſuch Trial they have found them all to concur. You ſeem to argue upon a Suppoſition of this Fact to be otherwiſe than the Jury have found it: The Jury have found you guilty of all the Circumſtances within the Statute: There was no Matter of Law in this Caſe, but Matter of Fact; whether on purpoſe, and of Malice forethought, and by lying in wait, the Noſe of Mr. *Criſpe* was not ſlit with Intention, in ſo doing, to maim or diſfigure, and whether you were not feloniouſly preſent, aiding and abetting. The Jury had the whole Evidence before them: They conſider'd of the whole Matter of the Preparation, and lying in wait to do the Fact; of the Fact itſelf; of the Means and Inſtrument made uſe of to do it; of the Manner of doing it; and of all the other Circumſtances and Particulars relating to the Fact: And on the whole, after they had withdrawn, and conſider'd amongſt themſelves for ſome Time, they have found you guilty within the Terms and Circumſtances of the Statute. So that though all the Caſes put by you ſhould be very good Law, yet they do not any ways affect yours, becauſe you are actually found guilty of the Crime itſelf. Have you therefore any Thing to ſay againſt the Indictment itſelf.

Coke. I hope I have one Glimpſe more; from the King's Pardon, publiſh'd in the Gazette.

L. C. Juſtice. If you offer any Pardon by Act of Parliament, or under the Great-Seal, I muſt allow it; but if you mean only a Promiſe of Pardon in the Gazette, you muſt apply for this immediately to his Majeſty.

Coke. I beg your Lordſhip will give me Time, that I be not hurried out of the World preſently.

L. C. Juſtice. I ſhall conſider of it, and give you a convenient Time. Mr. *Coke*, you ought ſeriouſly to reflect on your paſt Life: You cannot but own you have been a great Sinner; you have had Malice in your Heart againſt this Gentleman above three Years; you propos'd it to *Moone* three Years and an half ago, to knock Mr. *Criſpe* on the Head.

Coke. I declare, as I ſhall anſwer it at the Great Day, I never ſpoke to *Moone* about any ſuch Thing.

L. C. Juſtice. Suppoſing that *Moone* hath ſaid too much; yet the Crimes you own, and cannot deny, are exceeding heinous. You own, that you invited your Brother to ſup at your Houſe on Purpoſe, that you might have an Opportunity of murdering him. This is ſuch a Crime as ſhocks human Nature: The bare Mention of it is frightful and terrible. The deeper therefore your Crime is, the deeper your Repentance ought to be. As to the Judgment of the Law, which is now to be pronounced upon you both, it is this:

The Sentence. *That you, and each of you, go from hence to the Place from whence you came; and from thence to the Place of Execution, where you ſhall be ſeverally hanged by the Neck till you be ſeverally and reſpectively dead. And the Lord have Mercy on your Souls.*

The Execution. On Saturday the 31ſt of *March*, 1722. they were both executed at *Bury St. Edmund's*.

An ACCOUNT *of the* Behaviour, Confeſſion, *and* Laſt Dying Words *of* Arundell Coke *Eſq*; *and* John Woodburne *Labourer, who were executed at* Bury St. Edmund's, *in the County of* Suffolk, *on Saturday*, March 31. 1722.

MR. *Coke* no ſooner found himſelf under that Sentence his Crimes had ſo juſtly drawn upon him, he diligently apply'd himſelf to the obtaining a Pardon: To which End many Perſons were employ'd to ſollicite Mr. *Criſpe* to a Reconciliation, which was thought the firſt Step neceſſary to be taken in the Affair. Mrs. *Coke* had divers Conferences with him, to engage him thereunto; and, with all the Tears and Entreaties of a Siſter, begged her Huſband's Life upon the Terms of perpetual Baniſhment to the remoteſt Parts of the Earth, or any other whatſoever that could be thought ſufficient to attone for ſo heinous a Crime, as believing ſomething like this might be obtain'd, in caſe Mr. *Criſpe* could be brought

brought to join in a Petition to his Majeſty for that Purpoſe: But as Mr. *Criſpe* was, on the one hand, preſs'd by the Importunities of the Friends and Relations of the Criminal, ſo, on the other hand, was he almoſt worn out by the Gentry, *&c.* of the Country, to contemn and reject their Propoſals; and at length, being reſolv'd to hear no more Supplications, of what Nature ſoever, that came from the Gaol, Mr. *Coke*, after one or two ineffectual Letters to him, began to turn his Thoughts another Way, and to think of other Methods.

A Gentleman was diſpatched to *London*, with Bank-Bills of 400*l.* not only to defray his Journey, but to anſwer other Expences incident to his Commiſſion. During the Sollicitations of this Perſon in Town, Mr. *Coke* was viſited by ſeveral Clergymen in the Country, who endeavoured to bring him to a due Senſe of his ſad Condition: Publick Prayers were put up for him in *Bury*, as well as in two or three Churches in *London*; but he continued to entertain ſtrong Hopes of a Reprieve, till his Agent, who depended upon the Intereſt of a certain great Dutcheſs, had wrote him an Account, that his Offence appeared ſo deteſtable in the Eyes of the People above, that he was altogether unable to prevail for a Reſpite of ten Days only.

He was now altogether confuſed and dejected; but as Death began to make its nearer Approaches, he began to make due Preparations for his Diſſolution; and having deſired an Interview with his Accomplice *Woodburne*, (who was confined in another Apartment,) earneſtly asked his Forgiveneſs, for engaging him in ſo horrid an Enterprize to his utter Deſtruction; but *Woodburne*, even to the Day of the Execution, would not be brought to ſay he forgave him, but ſaid he died in Charity with all the World beſides. The Execution was impatiently expected by all Ranks and Degrees of People; previous to which Mr. *Coke* wrote the following Letter to the under Sheriff.

Moſt Worthy Sir,

"THE Manner of the Execution of the Sen-
" tence of Death paſſed on me, is entirely at
" your Diſcretion; and having juſt Cauſe to appre-

" hend, that Inſults peculiar to the rude and bar-
" barous Diſpoſition of the Multitude may be then
" offered to me, it is my earneſt and dying Requeſt,
" that you order the Execution to be done as early
" on Saturday Morning as poſſible, the like Favour
" having been granted ſome few Years ſince to a
" foreign Gentleman at *London*; and as this will
" tend rather to preſerve, than diſturb the Peace of
" the Country, I have great Reaſon to hope, from
" your Chriſtian Diſpoſition, that this poor Boon
" will be complied with,

Your moſt Miſerable,

Wedneſday,
9 at Night. *And Dejected Servant,*

A. COKE.

The Sheriff having intimated to Mr. *Coke*, that he deſigned to comply with his Requeſt, and had appointed his Execution alone by Six in the Morning, on Friday he took his Leave of his Wife, *&c.* in the moſt ſolemn Manner; and about Seven at Night received the Holy Communion from the Hands of the Reverend Mr. *Burton*, a neigbouring Clergyman, expreſſing the greateſt Sorrow for his Offence, which, he ſaid, had rendered him the moſt odious and contemptible Creature living. To prevent the Noiſe and Clamour which an extraordinary Concourſe of People might occaſion, and which Mr. *Coke* apprehended, as appeared by his Letter, it was very induſtriouſly given out, the Execution was to be at the uſual Hour; but to the great Diſappointment of the People in the adjacent Villages, Mr. *Coke* was convey'd from the Gaol between Six and Seven in the Morning to the Place of Execution, in a Mourning Coach, accompanied by the Reverend Mr. *Burton*, and two of his own Relations, dreſſed in a Mourning Suit, the ſame he wore at his Trial. He diſcovered very great Sign of Sorrow and Contrition, and entreated the Spectators, which were pretty numerous, to pray for his departing Soul. Mr. *Burton* preſſed him very earneſtly to declare, whether he was not concerned in poiſoning Mr. *Criſpe*'s Children. To which he would not make any direct Anſwer; but only ſaid, he was under ſuch Diſorder and Preſſure of Mind, as he could not

not remember any Thing of thoſe Matters. He was ſoon after turned off, uſing ſome pious Ejaculations, the People expreſſing a general Satisfaction at his Death. His Body was carried away in a Hearſe, which waited at the Tree; and was privately interred the ſame Evening, about four Miles from *Bury*.

Woodburne was very much regretted, in regard his Ignorance and Poverty were ſuppoſed to be the Means which drew him into his wretched Maſter's Purpoſes, and of which the other no doubt took Advantage to engage him. There was generally a large Concourſe of People at the Gaol to viſit him, which occaſioned him to drink much: Notwithſtanding which, when he found all Hopes of Life vaniſhed, he applied himſelf very ſeriouſly to fit himſelf for another State, ſeeming to have a juſt Senſe and Sorrow of his Crimes, and ſpent his Nights, as well as Days, in Prayers and Tears, earneſtly asking Pardon of God for his wicked Life, publickly confeſſing that he was ever addicted to pilfering, and other ſcandalous Practices. Mr. *Coke*, who kept himſelf more retired, ſent to deſire to ſpeak with him when he was going to Execution; but he would not ſee him. About One o'Clock the ſame Day he was carried to the Place of Execution with a Felon; where the Reverend Mr. *Dent* attended him, and deſired him to confeſs his Knowledge, if he had any, of poiſoning Mr. *Criſpe*'s two Children: He very frankly acknowledged, that once, by Mr. *Coke*'s Directions, he gave the ſaid Children two Sugar-Plumbs, who died ſoon after; but could not take upon him to ſay thoſe Plumbs were poiſonous. He wept bitterly at the Place of Execution; and deſired the Standers-by to take Warning by his ſad Example; and having repeated the Apoſtle's Creed, and ſung ſome Penitential Pſalms, he was turned off with the other Malefactor, the People crying out, *The Lord have Mercy on their Souls.* His Corpſe was interred the next Night on the Outſide of the Church-Yard Wall.

A True COPY *of a Paper delivered by Mr.* Coke *to a Friend the Night before his Execution.*

I Know, as my unhappy Caſe is become the Subject of all Converſation, eſpecially in this Part of

the Kingdom, the World will expect I ſhould ſay ſomething as a Gentleman, as well as a Criminal; though my Birth and Education are too well known to need any Mention; and I once as little thought they would ever have come upon the publick Stage in this Manner.

In the firſt Place, I heartily beg Pardon of Mr. *Criſpe* for the great Injuries I have done, and the far greater I intended to do him. If he had contributed toward ſaving my Life, he ſhould not have found me unworthy of deſerving it; but as my miſerable Fate is the Reſult of Heaven and Earth, I willingly ſubmit thereto.

My Trial was before a Judge, the moſt ſage and learned in the Univerſe, and my Jurors were Men of Honour and Probity; wherefore I have no Reaſon to fix a Complaint on that Side: But I have been fond enough to believe, that if my Council had been allow'd to argue thoſe Points of Law I ſo much inſiſted on, I had not been in theſe Circumſtances. And I now muſt return my Thanks to Mr. *Harvey* and to Mr. *Price*, who were ready to aſſiſt me herein; and I may venture to ſay, the fatal Step I took in endeavouring to render myſelf entitled to the Benefit of his Majeſty's Pardon, was one of the chief Cauſes of my Conviction.

As myſelf, and the unhappy Wretch who ſuffers with me, are the firſt who fall by this very penal Act, ſo I pray God we may be the laſt.

The Stories ſpread ſo induſtriouſly of my employing *Woodburne* to poiſon Mr. *Durrant*'s Horſe, Mr. *Salisbury*'s Swine, *&c.* are the natural Prejudices the World too readily entertains of People under my unhappy Circumſtance: As for any of thoſe Matters, I here declare myſelf as innocent, as it is poſſible for a Man to be; and if *Woodburne* is otherwiſe, it will be his Duty to diſcover the Truth.

The Confuſion I am under, obliges me to conclude myſelf,

Your Unhappy Friend,

A. C.

The

The TRIAL *of* CHRISTOPHER LAYER Eſq; *at the* King's-Bench *for High-Treaſon*, NOV. 21. 1722. Mich. 9 Geo. I.

ON the 31ſt of *October*, 1722. *Chriſtopher Layer* Eſq; was brought up to the Court of *King's-Bench* by *Habeas Corpus*, directed to the Lieutenant of the *Tower* of *London*, to be arraigned on an Indictment of High Treaſon found by the Grand Jury for the County of *Eſſex*, on a ſpecial Commiſſion of *Oyer* and *Terminer*.

Vol. vi. p. 229. *Chriſtopher Layer* arraigned for High Treaſon.

The Return of the *Habeas Corpus* being filed on the Motion of Mr. Serjeant *Pengelly*, the Priſoner was arraigned, and the Indictment read; which ſets forth,

The Indictment.

I. THAT *Chriſtopher Layer*, late of the Pariſh of *St. Andrew's*, *Holborn*, in the County of *Middleſex*, Eſq; being a Subject of his Majeſty King *George*, not having the Fear of God in his Heart, but moved and ſeduced by the Inſtigation of the Devil, as a falſe Traitor, *&c.* intending the Government of this Kingdom to ſubvert, and his ſaid Lord the King to depoſe, and bring to Death and final Deſtruction, and to exalt the Perſon ſtiling and pretending himſelf to be King of *England*, by the Name of *James* III. to the Crown of this Realm, the 25th Day of *Auguſt*, in the 9th Year of the Reign of the King that now is, and, at divers other Days and Times, as well before as after, at *Laytonſtone* in the ſaid County of *Eſſex*, did traiterouſly compaſs and imagine the depoſing the ſaid King, and bringing him to Death and final Deſtruction.

II. And to accompliſh, and bring about the ſaid Treaſons, did, with divers other falſe Traitors to the Jurors unknown, on the ſaid 25th of *Auguſt*, and, at divers other Times, before and ſince,

at

at *Laytonſtone* aforeſaid, traiterouſly meet, propoſe, conſult, conſpire, and agree to raiſe an Inſurrection and Rebellion within this Realm for the Purpoſes aforeſaid.

III. And for the more effectual compleating and perfecting the ſaid Treaſon, at the Time and Place aforeſaid, did traiterouſly publiſh a ſeditious Writing, purporting an Exhortation, Incitement, and Promiſes of Rewards to his Majeſty's Subjects, to levy War againſt the ſaid King for the Purpoſes aforeſaid.

IV. And for the more effectual compleating and perfecting the ſaid Treaſon, did, at the Time and Place aforeſaid, traiterouſly conſult, conſpire, and agree, with an armed Force, the ſaid Pretender to exalt and bring to the Crown of this Kingdom.

V. And for the more effectual compleating and perfecting the ſaid Treaſon, at the Time and Place aforeſaid, did traiterouſly raiſe and retain ſeveral Men, to the Jurors unknown, to take up Arms, and levy War againſt the ſaid King, for the Purpoſes aforeſaid.

VI. And for the more effectual compleating and perfecting the ſaid Treaſon, at the Time and Place aforeſaid, with other falſe Traitors, to the Jurors unknown, did traiterouſly conſult, conſpire, and agree to ſeize and impriſon the ſacred Perſon of the ſaid King, for the Purpoſes aforeſaid, againſt the Duty of his Allegiance, the King's Peace, and the Statute in that Caſe made and provided.

Vol. vi. p. 230. The Priſoner complains of hard Uſage.

Priſoner. My Lord, I am brought here in Fetters and in Chains; I have been us'd more like an *Algerine* Captive, than a free-born *Engliſhman:* I have been dragg'd through the Streets by the Hands of Gaolers; and have been made a Shew, and a Spectacle of. I am now in a Court of Juſtice before your Lordſhip; and, I hope, the Time will come, when I ſhall have a candid and fair Trial, and not be made a Sacrifice to the Rage and Fury of any Party, or the Neceſſity of the Times. I had not ſaid this, but I have been inſulted ſince I came into the Hall. A Gentleman came, and told me, *either you muſt die, or the Plot muſt die.* My Lord, this

this is Uſage inſufferable in a Chriſtian Nation; and, I think, I can lay my Hand upon my Heart, and ſay, I have done nothing againſt my Conſcience..

Serj. *Pengelly.* If Mr. *Layer* hath any Objections to the Indictment, he may make them; but ſhould not go on in this Manner.

Priſoner. My Lord, I hope, I ſhall have theſe Chains taken off, that I may have the free Uſe of my Reaſon; and then, that I ſhall have a fair and tender Trial. He moves to have his Irons taken off.

L. C. Juſtice. There have been a great many Things ſaid by you which we cannot examine into: You have given a general Charge of ſome People uſing you ill: Your Expreſſions are not juſt and right; you charge no particular Perſon; we can take no Notice of them. As to your Chains, that muſt be left to thoſe to whom the Cuſtody of you is committed by Law. When you come to your Trial, your Chains may be taken off. Conſider the Matter of this Day: If you have any Objections to the Indictment, the Court will hear them; if not, you muſt plead. Lord Chief Juſtice *Pratt.*

Att. Gen. I am ſure nothing is intended, but that he ſhould have a fair Trial: But to complain here of hard Uſage, of Chains, and Impriſonment, carries with it a Reflection of Cruelty. The Priſoner hath been kept, as every Body in his Circumſtances are, when they have been attempting to make an Eſcape. As to any other Matters of Hardſhip, I don't believe it, but that he hath had as much Freedom and Liberty as is proper and uſual. As to the Man who inſulted him in the Hall, I know nothing of it; but, can't but obſerve, that it is an eaſy Matter for People to contrive ſuch a Thing in concert together: It might be ſomebody ſet on by himſelf that did it. Sir *Robert Raymond* Attorney-General.

L. C. Juſtice. Alas! If there hath been an Attempt to eſcape, there can be no Pretence to complain of Hardſhip. What does the Gentleman-Gaoler ſay?

Gent. Gaoler. He never attempted to eſcape, ſince he was in my Cuſtody.

Att. Gen. No; it was before.

Soll. Gen. This Complaint is made only to captivate the By-ſtanders; and tho' it is aggravated in this ſolemn Manner, amounts to no more than this, *Wearg* Sollicitor-General.

this, That a Priſoner, who ſtands charg'd with High-Treaſon, is brought up hither under a Guard, and in Fetters, as Perſons in that Condition uſually are. It is very well known, that when this Gentleman was in the Cuſtody of a Meſſenger, he not only made an Attempt to eſcape, but actually eſcaped; got out of a Window two Pair of Stairs high, and from thence over the Water into *Southwark*; and ſince that is ſo, can there be any Colour to ſay, that what was done afterwards was unwarrantable. It does not become a Perſon in the Priſoner's Circumſtances to aggravate and miſrepreſent the Uſage he has received. I ſay thus much, becauſe I would not have it gone away with, that there has been any Hardſhip put upon the Priſoner contrary to Law. No; his Majeſty, who makes the Laws of the Land the Rule and Meaſure of all his Actions, though he will have Juſtice done to himſelf and his Government, againſt any Perſon that ſhall conſpire to overthrow it; yet he will ſuffer no Hardſhips to be done even to ſuch Perſons contrary to Law.

Vol. vi. p. 231. His Council moves to have his Irons taken off.

Mr. *Hungerford.* My Lord, that he is in Chains now is demonſtrable; and he hath told me in the *Tower*, that they are ſo grievous to him, that he cannot ſleep but in one Poſture, and the Gentleman Gaoler now helps to hold up his Chains; otherwiſe the Priſoner could not ſtand. And, I believe, I might challenge them to give an Inſtance where any Priſoner was ſhackled with Irons in the *Tower* before Mr. *Layer*. His Majeſty's Priſoners of the *Tower* are ſuch Strangers to this Uſage, that they had not the very Materials there: They were ſent for from *Newgate*; and I hope they will be carried back again thither. And I humbly inſiſt upon it, that by Law he ought not to be called upon, even to plead, till his Fetters are off. My Lord *Coke* is clearly of that Opinion. The only Reaſon aſſigned for putting of Irons at all upon a Priſoner is, to keep him in ſafe Cuſtody. The Laws of *England* allow of no Tortures; and the Reaſon why they are taken off in the Courſe of Proceedings againſt him in a Courſe of Juſtice, ſeems to be, that his Mind ſhould not be diſturb'd by any Uneaſineſs his Body or Limbs ſhould be under. And as to the Diſtinction, that his Chains ſhould be on when he pleads, becauſe but for a Moment, and off when he is try'd, becauſe that

that will be of longer Duration; it is poſſible what we have now to ſay may be as long as ſome Trials; I ſhould think too, that ſomething of the Dignity of the Court, where the King is ſuppos'd to be perſonally preſent, might be conſider'd. To have a Man plead here for his Life in Chains, ſeems to be very unſuitable. As to the ſafe Cuſtody intended by the Irons, is he not here too well guarded to eſcape?

Mr. *Kettlebey*. At the Trial of *Cranburne*, when he was brought up here before my Lord Chief Juſtice *Holt*, he inſiſted that his Chains ſhould be taken off before he pleaded, and it was order'd. This was likewiſe mention'd in the Trials of *Dorrel*, *Gordon*, and *Ker*; and the Court declar'd, If the Priſoners inſiſted on it, it ought to be done. In the tenth Folio of *Kelynge*, it is expreſly declar'd, on a Conſultation of all the Judges in *England*, that a Priſoner ought to have his Irons taken off before he pleads. Mr. *Kettlebey*, his other Counſel.

L. C. Juſtice. The Caſe of *Cranburne* was different: He was call'd upon to plead, and try'd at the ſame Time; and no doubt of it, he is not to be in Chains at his Trial. But here he is only call'd upon to plead by Advice of his Counſel, and is not to be try'd now; and why ſhould his Chains be taken off this Minute, and put on the next: And though it hath been ſaid, he is too well guarded, I don't think a Man charg'd with High-Treaſon of this Nature can be too well guarded, eſpecially if he hath endeavour'd to make his Eſcape; that will juſtify more than the Law allows in other Caſes.

Mr. *Hungerford*. My Lord, what I mean by ſaying too well-guarded, I mean ſufficiently guarded.

L. C. Juſtice. Have you any Thing more to offer? This is nothing but to captivate the People.

Mr. *Hungerford*. My Lord, we humbly hope, that the better to prepare himſelf for his Trial, he might continue without his Chains till after that Time.

L. C. Juſtice. I am of another Opinion. If we ſhould order his Chains off, and he eſcapes, we may be guilty of his Eſcape; therefore to make Objections in Matters of this Nature, is to caſt a Reflection on the Court, for not doing that which is not in their Power to do.

Mr.

They move to quaſh the Indictment.

Mr. *Hungerford.* My Lord, I am of Counſel with the Priſoner: I have here in my Hand the whole Record deliver'd to him; in which not only the Indictment is ſet forth, but the Commiſſion of *Oyer* and *Terminer.* After the Commiſſion hath enumerated the Names of the Commiſſioners, it goes on, and ſays what are the Offences that they are authoriz'd to enquire of, as High-Treaſon, Miſpriſion of Treaſon, and other Offences of a leſſer Degree. Then it goes on, and ſays what the Perſons ſhall be concerning whom this Enquiry ſhall be made; *Et per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articulis & Circumſtantiis, præmiſſa & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunque concernen' plenius veritat'.* My Lord, I have conſider'd the Words with all the Accuracy I can, and have endeavour'd to render them into *Engliſh*; but cannot. I muſt ſay, I look upon theſe Words, as plac'd in the Record, to be Nonſence, and not capable of being render'd into *Engliſh*; for they import no Meaning at all: It is a Blemiſh in the Commiſſion itſelf; and if ſo, the Enquiry taken by Virtue of that Commiſſion muſt fall to nothing; and conſequently, this Indictment muſt be nought. My Lord *Coke*, for the ſake of Poſterity, I ſuppoſe, hath given us the Form of the Commiſſion of Oyer and Terminer in his Time; and there theſe Words are entirely left out: They ſeem to be Words of no Signification; therefore we hope there ſhall be no further Proceedings till this is ſet right, and that the Indictment ſhall be quaſh'd

Vol. vi. p. 232.

Mr. *Kettlebey.* My Lord, there are other Objections; Is it your Pleaſure we ſhould go on this firſt, or mention them all together?

L. C. Juſtice. Make all your Objections together.

They object a Miſnomer.

Mr. *Hungerford.* My Lord, the firſt Thing that occurs to me, in the Indictment itſelf, is, that this Gentleman's Chriſtian Name is wrong ſpelt, being there call'd *Chriſtopherus Layer*, with an *e*; whereas it ſhould be *Chriſtophorus*, with an *o*.

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Mr. *Kettlebey.* My Lord, I have here in Court ſeveral of the beſt Dictionaries and Lexicons, which ſhew the true Word to be *Chriſtophorus*; and I believe the Gentlemen on the other Side can't produce one

one Inſtance in any authentick Book, *Greek* or *Latin*, where it is not always ſpelt with an *o*.

L. C. Juſtice. How do we know what his Name is? You muſt plead it in Abatement: He might be chriſten'd *Chriſtopherus*, for ought we know.

M. *Kettlebey.* My Lord, for falſe Spelling ——

L. C. Juſtice. How doth that appear to us? You are wrong in making your Objection at this Time; I would not prevent your offering any Thing that is material for your Client; but if I can ſatisfy you that you are improper in Form, it may ſave the Time of the Court.

Mr. *Kettlebey.* I hope your Lordſhip will pardon me: Here is the Life of a Man concern'd; and as I would not willingly offer any Thing that in the like Caſes hath been over-rul'd, ſo neither would I omit any Thing that may be material for the Priſoner, whoſe Defence the Court hath entruſted us with; therefore I will go on to the other Objections, that we think to be improper *Latin*; *Compaſſavit, imaginatus fuit & intendebat:* Theſe are the Words. I don't know whether this *Latin* will go down in *Weſtminſter-Hall*, but I'm ſatisfied it would not in *Weſtminſter* School. Objections, that the Indictment is falſe *Latin*.

Here is the *Et intendebat*; *Et*, a Conjunction Copulative between Verbs in ſeveral Tenſes. Here is *Compaſſavit*, the Preterperfect Tenſe; *Imaginatus fuit*, the Preterperfect Tenſe; and *Intendebat*, the Preter-imperfect Tenſe. Why ſhould not the laſt Verb be put in the Preterperfect Tenſe, according to the Rules of Claſſical *Latin*, as well as the two former.

There is another Word in the Indictment, namely, that of *Seiſiend'*. That the Priſoner *conſpiravit ad ſacram perſonam Domini Regis capiend', ſeiſiend', & impriſonand'*. By the Words coupled with it, I ſuppoſe *Seiſiend'* is intended to mean the taking or laying violent Hands upon his Majeſty's Perſon; but ſure there never was ſuch a Word in any Indictment before, or to be found in any Author whatever: It is neither Claſſical *Latin*, or Law *Latin*; but a mere fictitious Word, coin'd for this very Purpoſe, without any Precedent to warrant it. My Lord *Coke*, in his firſt Inſtitutes, p. 17. ſays, That the Word *Seiſitus* comes of the *French* Word *Seiſin*; and that in Common Law 'tis properly applied to Freehold,

hold, in Contradiſtinction to *Poſſeſſionatus*, which relates to Chattels; for *Seiſitus* and *Poſſeſſionatus* are mention'd as Terms of Arts, technical Words in the Law, that by long Uſe have acquir'd to themſelves one peculiar and determin'd Signification; for which Reaſon I don't object againſt the Word *Compaſſavit* in this Indictment, it having been always uſed in Indictments of High-Treaſon to expreſs compaſſing the Death of the King: But where did they meet with the Word *Seiſiend'*? And they would fancy it to be a Gerund of ſome unknown active Verb. How came they to give it this Senſe, to make it ſignify the ſame as *Capiend'*? I apprehend the very Giſt of the Indictment, at leaſt ſo much of it as relates to this Overt-Act, entirely depends upon this Word *Seiſiend'*; and if this appears to be inſignificant, barbarous, falſe, or improper *Latin*, I hope it is ſufficient to overthrow the whole Indictment.

L. C. Juſtice. Read that Part of the Indictment.

Clerk of the Court reads, *Quod tu* Chriſtopherus Layer, *&c. ad capiend', ſeiſiend', & impriſonand', &c.*

L. C. Juſtice. Ad capiend' & impriſonand'. Won't theſe Words do; ſuppoſe the other Word *ad ſeiſiend'* inſignificant?

The King's Counſel anſwer the Objections. Vol. vi. p. 234.

Serj. *Pengelly.* My Lord, theſe Objections have been made with ſo much Ceremony, and uſher'd in with ſuch Pomp, as if ſomething elſe was meant than quaſhing this Indictment. The Objections to the Commiſſion we apprehend improper: It is not in the Power of the Court to quaſh the Commiſſion; and therefore to mention miſpelling, and of falſe and improper *Latin* therein, ſignifies nothing; but upon reading it, we think this Objection will quite vaniſh. Theſe Words are uſed in all Commiſſions of like Nature, and are inſerted in the very Form of the Commiſſion; and the Caption of the Indictment, publiſh'd in the Treatiſe, allow'd by all the Judges of *England*, call'd a Collection of Statutes, relating to High-Treaſon, compoſed for the Aſſiſtance of the Juſtices in *Scotland:* And becauſe of the ſuppoſed Difficulty of theſe Words, I will for the ſake of the Gentlemen on the other Side, read them in the Order they are to be conſtrued, thus: *Ad inquirend' plenius veritatem per ſacrum probos'*

hos' & legal' hom', &c. de quibuſcunque proditionibus Miſpriſionibus, &c. per quoſcunque & qualitercunque; Hit' Fact, &c. Ac de aliis Articulis, &c. & ad eaſdem prodition' & al' præmiſs' audiend' & terminand'. Here they are to enquire more fully the Truth of, and concerning all Treaſons, Miſpriſions of Treaſon, by any Perſon whomſoever committed, *&c.* And if the Words *Plenius Veritat'* had immediately follow'd the Word *Inquirend'*, every Body at firſt Reading muſt be ſatisfied, that no Objection could be made thereto; and the Objection now is only made on Account of the placing theſe Words at the End of the Sentence; but it makes no Difference in the Conſtruction or Senſe. How otherwiſe can it be conſtrued or underſtood, but to enquire more fully of the Truth of thoſe Offences there enumerated, and what Perſons are guilty? *&c.* And therefore I take it, that the Form of the Commiſſion is proper, and will be juſtified, not only by the Senſe of it, but by the uſual and common Courſe of Proceeding. As to the next Objection, the ſpelling *Chriſtopherus* with an *e*; if there be any Difference in the Name, it muſt be pleaded in Abatement, if they would take the Advantage of it. As to the Objection, that the three Verbs which charge the High-Treaſon, *viz. Compaſſavit, Imaginatus fuit, & Intendebat*; that they are not in the ſame Tenſes, there is no Neceſſity; the laſt Verb ſhould be of the ſame Tenſe with thoſe that go before the Copulative (*Et*) in the ſtricteſt *Latin:* Though *Compaſſavit & Imaginatus fuit* be in the Preterperfect Tenſe, yet *Intendebat* may be well added in the Preterimperfect Tenſe; and that will make no Difference, they being all three alledg'd, and found in the Time paſt, before the Indictment exhibited.

My Lord, as to the next Objection, that there is no ſuch Word as *Seiſiend'*, I think the Word is proper and ſignificant; and were it otherwiſe, as it is not made uſe of in alledging the Treaſon itſelf, but the Overt-Act or Evidence of the Treaſon, it will not vitiate that Part of the Indictment; for if any one of theſe Words alledg'd is prov'd upon the Trial, the Priſoner ought to be found guilty. Whether he compaſs'd to take the Perſon of the King, or to ſeize his Majeſty, or to impriſon and detain him; any of theſe Attempts, if prov'd, is ſufficient, and

the Priſoner ought to be convicted. But the Words *Seiſire & ad Seiſiend'* are Terms known in Law, and frequently uſed in Actions of Treſpaſs. We think the Word *ad Seiſiend'* is a proper Expreſſion in this Caſe, to ſignify the Attempt or Deſign to ſeize and apprehend the Perſon of his Majeſty; and we hope there is nothing in theſe Objections.

Vol. vi. p. 235. *Att. Gen.* Your Lordſhip may pleaſe to obſerve, that immediately after theſe Words, *Plenius veritatem* in the Commiſſion, there is a Comma, and none before: The whole Sentence before is entire; and therefore in Conſtruction the Words *Plenius veritatem*, refer to the Words *Ad inquirendum* at the Beginning of the Sentence. In our legal Proceedings, indeed, we are ſeldom ſo nice to confine ourſelves to the *Latin* of the Claſſicks; but this is very proper *Latin*; and the diſjoining of the Words *Plenius veritatem* from the Words *Ad inquirendum*, by which they are govern'd by the Interpoſition of ſo many Words, is no Objection; for nothing is more common in the beſt Authors, than placing the moſt material Words at the Cloſe of a very long Sentence, which in Point of Conſtruction muſt refer to others at the Beginning.

As to the Objection, that the Word *Seiſiend'* is not known in our Law; if that was true, it would not quaſh the Indictment, becauſe there are ſeveral other Words to the ſame Effect; but we inſiſt, that this is a very proper Word. In the *Exchequer*, the Word uſed in Caſe of Seizures, is *Seiſivit*, Writs iſſue, commanding the Sheriff *Seiſire* ſuch Lands, *&c.* into the King's Hands, and the Sheriff returns *Seiziri feci.* It is a Law Word therefore, which is here applied to the Perſon of our Sovereign; and as it is in the Proceedings before mentioned applied to ſeizing Lands, *&c.* why may it not be applied to the ſeizing of a Perſon? And then if *Seiſire* be proper, the Gerund from that muſt be *Seiſiendum*; and therefore we apprehend there is no Colour for this Objection.

The Priſoner's Council reply. Mr. *Hungerford.* I beg a few Words by Way of Reply: As to the firſt Objection, againſt the Words *Plenius veritat'*, as Words of no Senſe or Meaning, where they are plac'd in the Indictment, we hope it is not yet anſwer'd. Mr. *Attorney* hath endeavour'd to make them Senſe, by tranſpoſing them, and inſerting

ſerting *Plenius veritat'* ten Lines before they are in the Indictment; but if they are not Grammar, or intelligible, there the Objection ſtill holds. I know not what Liberty the King's Counſel hath to tranſpoſe Words; and though it be ſaid, the Judges have ſettled the Form of Proceeding in Caſes of High Treaſon by the Direction of the Houſe of Lords, and this *Plenius veritat'* is got into the Form inſerted in that Treatiſe, that Book, notwithſtanding the ſolemn Allowance of it by the Judges, is not a concluſive Authority. It was denied to be ſo in the Caſe of *Matthews*; where an Objection was taken to the Pannel of the Jury, becauſe the Addition and Places of Abode of the Jurymen were not inſerted according to the Directions of that Book. My Lord Chief Juſtice *King*, who preſided at that Trial, aſſiſted by all the Judges, except your Lordſhip, overrul'd that Exception; and therefore if we have no other Authority to combat with but that Book, we hope this Objection ſhall ſtand. Vol. vi. p. 236.

As to the Words *Compaſſavit imaginatus fuit & intendebat*, there is ſomething in that Objection too; for they are in different Tenſes or Times, and there is the Conjunction Copulative between them, as if both Tenſes implied the ſame Times, which it is certain they do not; and therefore they charge nought; for a Thing cannot be done lately, and formerly, and both at the ſame Time.

Mr. *Kettlebey*. My Lord, I believe four Parts in five of the Caption interfere between the *Inquirendum* and the *Plenius veritatem*; a whole Catalogue of Offences, ſeveral independent Sentences, different Times, Perſons, Places, Things, all ſtation'd between them; and yet theſe Words are to be united. I would be glad to know by what Rule of Grammar this can be done?

As to the Word *Seiſiend'*, they don't ſhew one Inſtance where it has been uſed. Indeed they mention a Precept to the Sheriff, where are found the Words *Seiſiri facias* and *Seiſiri feci*, which are juſtified by Uſage. Beſides, *Seiſiri* is there uſed in the very ſame Senſe which the Law hath impos'd upon it: It is to be put into Poſſeſſion; the Lands are ſo deliver'd by the Sheriff into the Hands of the King, that he becomes ſeiz'd thereof *ut de Feodo & in jure Corone*; but if ever that Word was put into any

any Indictment to ſignify to ſieze and impriſon the King, is entirely unknown to me.

Indeed, here is one Piece of Doctrine offer'd, which if it holds good, puts an End to all our Objections, and even the Act of Parliament on which they are founded, namely, that if any one Overt-Act is ſufficiently expreſs'd by any one Word, though there be Words that are improper, and falſe *Latin*, yet they will not vitiate the Indictment. What avails then this Act, that impowers us to make Objections to Miſwriting, Miſpelling, falſe and improper *Latin*? It is not to be ſuppos'd, that whoever hath the drawing of an Indictment, ſhould make Faults, and blunder on from firſt to laſt. I believe Mr. Attorney won't ſhew any Inſtance where one Overt-Act in an Indictment was ſet aſide, and the reſt of the Indictment held good. Exceptions have ever ſince the making of this Act been taken and argued by Counſel, and determin'd; but if this be a ſufficient Anſwer, ſurely they ſpent the Time of the Court to very little Purpoſe, in debating whether there were any Faults in the Indictment, when it was ſo eaſy to ſhew it was not faulty throughout.

Mr. *Hungerford.* My Lord, I beg leave to hand up this Precedent of my Lord *Coke*'s, where the Words *Plenius veritat*' in the Commiſſion are entirely left out.

Lord Chief Juſtice over-rules their Objections.

L. C. Juſtice. What is the Uſe you would make of an extrajudicial Opinion of my Lord *Coke*'s againſt the Opinion of all the Judges? Neither is concluding; but certainly the Opinion of all the Judges of later Times muſt have more Weight, than the extrajudicial Opinion of a ſingle Judge at any former Time. We have been told of Claſſical *Latin*, and *Ciceronian Latin*; and if there be any Regard to be had to that, is any Thing more common in every Part of *Cicero*, than to put Words laſt, that in Conſtruction muſt come firſt. Indeed it is not material where they ſtand; they muſt be taken in that Manner of Conſtruction as would make them ſignificant, that is, by taking the laſt Words *Plenius veritatem* to go firſt in Conſtruction, and then it is very proper and juſt.

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As to the Objection, that *Compaſſavit & Imaginatus fuit* are in the Preterperfect Tenſe, and *Intendebat*

debat in the Preterimperfect Tenſe, ſuppoſe it had been *Compaſſavit* only, or *Imaginatus fuit* only, or *Intendebat* only, would not either of theſe Words, whether in the Preterperfect or Preterimperfect Tenſe, have been ſufficient to have charg'd Mr. *Layer* with having ſome Time before compaſſed and imagined the Death of the King; and as here are ſeveral Overt-Acts of compaſſing and imagining the Death of the King laid to ſome, of which no Objection is made, any of theſe are ſufficient to maintain the Treaſon. One of the Overt-Acts is, That he did deſign, conſult, and agree *ad capiend' ſeiſiend' & impriſonand'* the Perſon of the King. Suppoſe it had been *capiend' & impriſonand'*, then you ſay it had been well enough; but the putting in this Word *ſeiſiend'* will vitiate the Whole, becauſe it is an improper and vitious Word. I dare not ſay in a Court of Law, that it is an improper and vitious Word: You are told of a Court of Law where the Word is uſed, and hath the ſame Signification as in the Indictment, as to ſeize Lands into the Hands of the King. To ſeize Lands, or to ſeize the King's Perſon, the Word is the ſame; and if *ſeiſire* is well enough to ſignify to ſeize Lands, *ſeiſire* is enough to ſignify to ſeize the King's Perſon; therefore I think it a proper Word. But whether it is, or not, there is ſufficient in the Indictment to maintain the Charge againſt Mr. *Layer*; for he is charg'd with a Conſultation and Agreement to impriſon, and detain the King in Priſon. Theſe are ſufficient, without the Word *Seiſiend'*; but the Word *Seiſiend'* hath been uſed in our Law Proceedings, and never objected to; and if we ſhould ſay it would not ſignify a Seiſing, we muſt ſet aſide half the Proceedings in the Court of *Exchequer*. In my Apprehenſion, therefore, theſe Objections can be of no Service to your Client; they ſignify nothing.

Mr. Juſtice *Powis*,
Mr. Juſtice *Eyre*,
Mr. Juſtice *Forteſcue-Aland*,
} I am of the ſame Opinion.

The reſt of the Judges deliver their Opinions.

L. C. Juſtice. The Objections being over-ruled, demand of him what he hath to plead.

Clerk of the Court. *Chriſtopher Layer*, hold up your Hand. How ſay you, *Chriſtopher Layer*? are you

you Guilty of the High Treaſon whereof you ſtand indicted, or Not Guilty?

Priſoner. I deſire my Plea of *Miſnomer* may be received; and I plead *Not Guilty*, as to the Fact.

[*Clerk of the Court reads the Plea.*]

A Plea of Miſnomer.

ET Chriſtophorus Layer *ad barram hic duct' in propria perſona ſua venit, & habito auditu Indictament' prædict' dicit quod ipſe eſt perſona in Indictament' prædict' mentionat' & intens' per nomen* Chriſtopheri Layer, *nuper de Paroch' St. Andreæ Holborne in Com' Midd', Ar'; & verſus quem, Indictament' prædict' prolat' exiſtit pro alt' proditione prædict' Et dicit quod ipſe ad Indictament' illud reſpondere compelli non debet, quia dic. quod ipſe diu ante tempus Captionis Indictament' prædict' necnon ante tempus offenſi in Indictament' ill' ſpecificat' & fieri ſuppoſit' baptizatus fuit per nomen* Chriſtophori, *& per id' nomen* Chriſtophori, *ſemper a tempore Baptizationis ſuo hucuſque vocat' nuncupat' & cognit' fuit; & hoc parat' eſt verificare unde ex quo ipſe non nominatur in Indictament' predict' per nomen* Chriſtophori *petit judicium de Indictament' illo, & ſi ipſe ad Indictament' prædict' ulterius reſpondere compelli debeat, &c. Et quoad proditionis in Indictament' prædict' mentionat' ipſe prædict.* Chriſtophorus Layer *dicit quod ipſe in nullo eſt inde culpabilis, & inde de bono & malo ponit ſe ſuper patriam, &c.*

J. Hungerford,
Abel Kettelbey.

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L. J. Juſtice. Your Plea is received: He hath pleaded in Abatement firſt, and then pleads over to the Treaſon. What ſay you to it?

Serj. *Pengelly.* We ought to have Time to draw up a Replication: We therefore pray he may be brought up again on Saturday.

Mr. Hungerford. I have ſome doubt if it can be by Rule, or muſt be by *Habeas Corpus.*

L. J. Juſtice. When once a *Habeas Corpus* hath been granted, and he is brought before us, we can order him to be brought again by Rule. He muſt be taken back, and brought here on Saturday next.

[*Dis*

[*Die Sabbati* 3 *die Novembris*, 1722.]

The Priſoner was this Day brought to the Bar by the Lieutenant of the *Tower*.

Att. Gen. My Lord, I have demurred to the Priſoner's Plea in Abatement, and pray the Demurrer may be read.

[*Clerk of the Court reads*]

The Plea demurred to.

ET Robertus Raymond Mil' Attorn' Domini Regis Generalis, qui pro eodem Dom' Rege in hac parte ſequitur habito audit' placiti præd' in caſſation' Indictament' prædict' ſuperius placitat' pro eod' Dom' Rege dicit quod idem placit' materiaque in eod' content' minus ſufficien' in lege exiſt' ad ipſum Criſtopherum *a reſpondend' ad Indictament' ill' excuſand' ad quod quidem placit' idem Attorn' General' neceſſe non habet, nec per legem terræ tenetur aliquo modo reſpondere. Et hoc idem Attorn' General' pro eodem Dom' Rege parat' eſt verificare prout Cur' &c. Unde pro inſufficient' placit' ill' idem Attorn' Dom' Regis General' pro eodem Dom' Rege petit Judic' & quod Indictament' prædict' bon' & ſufficien' adjudicatur*, &c.

Rob. Raymond.

Att. Gen. We pray they may join in Demurrer immediately.

The Priſoner's Counſel deſire Time to join in Demurrer.

Mr. *Hungerford.* My Lord, it is a Surprize to us; and as the Clerk has read it, it is impoſſible for us to take the Subſtance of this Demurrer: We therefore hope we ſhall be allow'd two or three Days to conſider this Matter of joining in Demurrer. *Fitz-Harris* had Five: Two or three Days is but a little Time, eſpecially when the Life of a Man is concerned. Mr. Attorney took from *Wedneſday* to *Saturday* to conſider of our Plea.

Mr. *Kettlebey.* My Lord, as I take it, the conſtant Practice is, That a Four-Days Rule is always given to join in Demurrer on the Crown-Side, as well as the Plea-Side; but if we are not regular in inſiſting upon four-Days, we hope at leaſt your Lordſhip will indulge us with ſome Time; or if we do immediately join in Demurrer, that we ſhall have ſome Time to prepare ourſelves to argue it.

L. C. Juſtice. How is the Courſe of the Court, Mr. *Harcourt*?

Mr. *Harcourt.* My Lord, in criminal Proſecutions for Miſdemeanors, two Four-Days Rule to plead are given, and a peremptory Rule moved for; and then, if there be a Demurrer, one Four-Days Rule to join in Demurrer is given, and a peremptory Rule moved for: But in Capital Caſes there is no Rule given either to plead, or join in Demurrer; all Proceedings in ſuch Caſes being at Bar, the Priſoner is obliged to anſwer immediately.

L. C. Juſtice. The Courſe of the Court is againſt you.

Mr. *Hungerford.* Surely, if in a Criminal Caſe, which is not capital, a Man is indulged four Days, in ſuch a Caſe as this is, which touches a Man's Life, his Poſterity, and Eſtate, the Indulgence ought to be more than four Days.

Mr. *Kettlebey.* We don't inſiſt upon this for Delay: We have pleaded over to the Treaſon; and in caſe we ſhould join in Demurrer, whatever Time is taken up in arguing, it cannot obſtruct the Proceedings in order to the Trial.

Vol. vi. p. 239. Serj. *Pengelley.* My Lord, what he prays, is againſt the Rules of the Court. They have put in a Plea in Abatement; we have demurred to their Plea: If it be not good, can they amend their Plea in Abatement? What then can they do but join in a Demurrer? Is it adviſeable to leave a Plea in Abatement to the Whole undetermined, and to try the Iſſue firſt? In all Capital Caſes, as well as in Criminal, the Plea in Abatement goes to the Whole, to deſtroy the whole Indictment, and ought to be determined before the Trial. They can do nothing elſe but join in Demurrer; and therefore we hope they ſhall join immediately.

Att. Gen. As to what has been ſaid about our having Time from Wedneſday to Saturday, the Reaſon was, becauſe Thurſday and Friday were no *Weſtminſter-Hall* Days; for which Reaſon we could not have the Priſoner brought up here before this Day. The putting in of a Demurrer to this Plea can be no Surprize to the Counſel for the Priſoner; for Yeſterday we ſent Copies of our Demurrer to them. In *Fitz-Harris*'s Caſe, the Time asked, was not to join in Demurrer, but for ſettling his Plea in a Caſe

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a Caſe of great Difficulty; and as ſoon as *Fitz-Harris* had pleaded, and the Attorney-General had demurred to it, the Court ordered the Priſoner to join in Demurrer immediately.

Mr. *Hungerford.* My Lord, I beg Leave to ſet a Matter of Fact right, as to the Caſe of *Fitz-Harris*, which was mentioned as an Authority againſt us, but in Truth is not ſo; for though *Fitz-Harris*'s Counſel did join in Demurrer immediately, yet that was not by the Coercion of the Court, but they voluntarily offered to join in Demurrer upon an Opinion, as I preſume, of their own great Abilities and Self-Sufficiency in the Matter: But we have not that Opinion of our Extempore Performances, but deſire Time to conſider of this Matter. In my Lord *Preſton*'s Caſe, 'tis true, the Court would not give him Leave to ſend for his Letters Patent; becauſe, as my Lord had opened it, they were dated at *St. Germains*, and granted by King *James* there, after his Abdication; and it would have been the higheſt Indignity, both to the Court and the Government, to have ſuch Letters Patent pleaded or inſiſted on; which, if allowed, would have imply'd, that the Government was not well ſettled on their Majeſties King *William* and Queen *Mary*; and that King *James*, though at *St. Germains*, had a Right to create Peers, and conſequently was really King. And though it hath been ſaid we are ty'd down by our Plea, I believe there are Inſtances, even in a Criminal Caſe, where a Plea hath been amended. I believe it was ſo done in the Caſe of my Lord *Banbury*, which was a Plea to the Juriſdiction of the Court. My Lord we ſhall deſire but a very little Time; which I hope will be granted us.

Mr. *Kettlebey.* In *Fitz-Harris*'s Caſe the Plea was amended. The firſt Time it was brought in by himſelf to the Bar; and being read, the Court aſſigned him Counſel, and gave him Time from Saturday to Wedneſday to put the Plea in a Legal Form. Vol. vi. p. 241.

Att. Gen. I beg Leave to ſtate that Fact right, as to *Fitz-Harris*. They ſay the Plea was put in, and afterwards amended: This is a Miſtake. His Wife brought a Plea into Court, and preſs'd it might be received; but Mr. *Fitz-Harris* was adviſed to conſider what he did; and thereupon he took it back,

and

and brought in a Plea which was received, and never altered afterwards.

L. C. Juſtice. It is the firſt Time that ever in a Capital Caſe, when a Plea in Abatement was pleaded, and the Attorney-General thought fit to demur to it, that the Party deſired Time to join in Demurrer. You are not entitled to any Time by the Courſe of the Court; and the Queſtion is, Whether you have given any Reaſon for us to indulge you with Time, that never was granted in a Caſe of this Nature? Do you want Time to conſider, whether you ſhall join in Demurrer? Can you do any Thing elſe? If you don't think fit to join, we muſt give Judgment againſt your Plea. Could you in this Caſe come with a Colour or Pretence of Juſtice, and deſire of us to amend your Plea? It is nothing but a pure dilatory Plea; nothing but an affected Delay; and therefore you muſt join in Demurrer immediately, or we muſt give Judgment againſt your Plea.

The Court order them to join in Demurrer immediately.

Mr. J. *Powis*,
Mr. J. *Eyre*,
Mr. J. *Forteſcue-Aland.*
} You muſt inſtantly join in Demurrer.

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Priſoner. My Lord, the Counſel for the King were indulged from Wedneſday to Saturday. I hope I ſhall have the ſame Indulgence to conſider whether I ſhall join in Demurrer, or not. I am ſo far from deſiring to give any Delay, though I am ſatisfy'd how maliciouſly this Proſecution is carried on, that I am willing, rather than continue to be thus hunted up and down the World, to retract my Plea, and plead generally, *Not Guilty.*

The Priſoner withdraws his Plea of of Miſnomer.

Mr. *Att. Gen.* If I underſtand the Priſoner right, he is willing to withdraw his Plea in Abatement, and abide by his Plea of not Guilty. This is what we deſire likewiſe; and I wiſh we cou'd go on in this Cauſe as we ought in a decent manner, without having groundleſs Reflections continually made: Something hath been ſaid of the Maliciouſneſs of this Proſecution, and indirect Management by ſome body; 'tis not ſaid by whom. My Lord, I defy any Man to ſhew any ſingle Step taken in carrying on this Cauſe, but what is perfectly right and juſtifiable.

Mr. *Hungerford.* I dare ſay the Priſoner did not entertain a Thought of reflecting upon any of the Profeſſion

Profeſſion concerned in carrying on the Proſecution. But the Man's Caſe is hard: He tells you he is in Chains; and I ſee he is in great Pain even now; and I earneſtly wiſh he were eas'd in that Matter. I do not pronounce theſe Words out of any Affectation of Popularity, or to captivate the Auditory, as was inſinuated in the Beginning of this Proceeding, but in mere Compaſſion I have to the Priſoner.

L. C. Juſtice. You have been told, it is not in our Power: He did once Eſcape, and for the better ſecuring him he was put in Chains: Can we take thoſe Chains off? If he ſhould eſcape out of the *Tower*, ſhall we not be guilty of his Eſcape?

Priſoner. If I thought it was contrary to Law I ſhould not mention it; but I deſire to obſerve, That theſe Chains were not put on till after a fourth or fifth Examination. As to my eſcaping out of the Meſſenger's Hands, he never ſhewed me his Warrant: I did not know what Authority he had to keep me. And as to eſcaping out of the *Tower*, it is not in my Power, neither is it in my Inclination: I deſire therefore to be eas'd of theſe Chains; and that I may have an Opportunity to ſee my Relations; that my Wife may come to me.

Mr. *Kettlebey.* That was granted in *Fitz-Harris*'s Caſe.

L. C. Juſtice. As to the taking off your Chains, you have had the Opinion of the Court; we cannot, we ought not to do it. As to the ſeeing his Relations, what do you ſay to it? Vol. vi. p. 243.

Mr. *Att. Gen.* There was a great deal of Caution us'd in *Fitz-Harris*'s Caſe: As to the Perſons permitted to ſee the Priſoner, they were to be ſearch'd, and to be with him only in the Preſence of the Keeper.

Mr. *Kettlebey.* The Wife had misbehaved herſelf there; and therefore a particular Caution was us'd in reſpect to her; but the Acceſs of a Wife to her Husband, under ſuch unfortunate Circumſtances, was never deny'd.

L. C. Juſtice. Upon a proper Application to the Court, they have ſometimes order'd that Perſons may have Acceſs to the Priſoner, in the Preſence of the Gaoler, and not otherwiſe; and that they ſhould be

be ſearched. If you think fit to deſire it on thoſe Terms, the Court will conſider of it.

Priſoner. I muſt deſire upon thoſe Terms the Court think fit; and that my Siſter may come with my Wife.

L. C. Juſtice. It may be reaſonable for them to have Acceſs to you in the Preſence of the Gaoler.

Mr. Serj. *Pengelly.* I beg leave to obſerve, whether it is uſual for the Court to make ſuch a Rule? In Sir *John Friend*'s Caſe, it was only intimated by the Lord Chief Juſtice *Holt*; the Court did not make a Rule for it: They know they may apply properly, and Directions may be given to the Lieutenant of the *Tower.*

L. C. Juſtice. I do think, Brother *Pengelly*, that the Court are truſted in a Matter of this Nature, and may properly give Directions with ſuch Cautions as they think fit. Is it the Wife or Siſter you deſire? I think one is enough; and ſhe muſt ſubmit to be ſearch'd.

Mr. Serj. *Pengelly.* Before your Lordſhip makes a Rule in this Caſe for the Priſoner, I deſire he may amend his Plea of Not Guilty, and plead by the Name of *Chriſtopherus.*

L. C. Juſtice. It muſt be amended.

Plea amended. Clerk of the Court. *Et predictus* Chriſtopherus Layer *allocutus exiſtens per Cur' hic de alt' prodition' predict' pro Indictamentum predict' & ſuperius Impoſit' qualit' ſe velit' inde acquietari idem* Chriſtopherus Layer, *dicit quod ipſe in nullo eſt inde culpabilis & inde de bono & malo ponit' ſe ſuper patram.*

Mr. Serj. *Pengelly.* My Lord, I believe it is uſual in theſe Caſes to appoint the Time of Tryal: The laſt Return but one in the Term is the 19th Day of *November*; ſo if you pleaſe it may be the *Quarto die poſt.*

Priſoner. I deſire your Lordſhip will give me a longer Day to prepare for my Tryal: I have a great Number of Witneſſes, moſt of them People of the firſt Quality: I hope I ſhall have the common Proceſſes of the Court to bring them in; and that I may have an *Habeas Corpus ad Teſtificand'* to bring my Lord *North and Grey* and my Lord *Orery* at my Trial; and if your Lordſhip pleaſe, it may be on *Monday* the 26th.

L. C. Juſtice.

L. C. Juſtice. That will be out of the Return, and it cannot be adjourn'd over beyond the Return: Three Weeks is a reaſonable Time to prepare for your Defence; conſider alſo the Term draws towards an End, and it interferes with the Common Buſineſs of the Term, if we carry it to a farther Day; we do agree the *Venire* to be return'd *Octab' Martin'*; and the Tryal then muſt be *Quarto die poſt*, which will be *Wedneſday* the 21ſt; and it is proper for us to give you an Intimation now, not to expect any farther Time. Do but conſider what a Multitude of Jurors muſt be brought up; Fourſcore at leaſt: The Priſoner hath a Priviledge to challenge Thirty five peremptorily, and after, for Cauſe, as many as he pleaſes: And for them to attend here the 21ſt, and then the Trial to be put off, will be a great Inconvenience and Charge; therefore that muſt be the Day. Vol. vi. p. 244.

Priſoner. I have a Witneſs to come from *Edinburgh*; and I can hardly have him here by the 21ſt. Is there no other Return for a *Venire* to be returnable?

L. C. Juſtice. No; there is none but that, and the laſt Day of the Term; and it is impoſſible to try him that Day, without doing a manifeſt Wrong and Injuſtice to the People of *England*.

Priſoner. I hope I ſhall be indulg'd two or three Days.

L. C. Juſtice. We can ſay no more: The Time you have to prepare for your Tryal, we think abundantly ſufficient; therefore we order the Trial to go on that Day.

Mr. *Kettlebey.* Your Lordſhip will order a Rule for his Wife and Siſter to come to him.

L. C. Juſtice. No; not for his Wife and Siſter.

Priſoner. My Lord, for a ſingle Woman to come through the Courts and the Guards, to be examin'd by herſelf, it's not ſo proper my Lord.

L. C. Juſtice. You ſhall have a Rule for your Wife to come; we muſt not be too forward in granting Women to come; we remember an Eſcape occaſion'd by a Woman's coming thither.

Mr. *Kettlebey.* My Lord, as to his having his *Habeas Corpus ad Teſtificand'* for my Lord *North and Grey* and my Lord *Orery*.

L. C. Juſtice.

L. C. Juſtice. You muſt give Notice; and then move what you pleaſe.

Mr. *Kettlebey.* I deſire he may have Copies of his Papers that were ſeiz'd.

L. C. Juſtice. Give Notice for what you think fit, and move it.

Die Mercurii 21 *Die Novembris*, 1722.

The Priſoner brought to his Trial.

This Day *Chriſtopher Layer* was brought to the Bar by the Lieutenant of the *Tower*, in order to his Tryal.

Clerk of the Court. You *Chriſtopher Layer*, now Priſoner at the Bar, theſe Men which you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death: If you will challenge them, or any of them, your Time to challenge them, is as they come to the Book to be ſworn, and before they be ſworn.

Mr. *Hungerford.* My Lord, we deſire his Irons may be taken off.

The Priſoner's Irons taken off. Vol. vi. p. 245.

L. C. Juſtice. The Irons muſt be taken off. We will not ſtir till the Irons are taken off.

Mr. *Hungerford.* The poor Man hath been oppreſſed by theſe Chains, that he was not able to prepare his Brief: I had it not till it was late at Night; and it is ten Sheets of Paper.

Att. Gen. Whoſe Fault is that? You had Time enough.

Mr. *Hungerford.* It is the Fault of the Irons, Mr. *Attorney.*

L. C. Juſtice. They ſhould have been taken off before he came to the Bar.

Att. Gen. There was Direction given for it. How they came not to be taken off, I cannot tell.

L. C. Juſtice. Now the Irons are taken off, go on.

Clerk of the Court. Heneage Norton Eſq;

L. C. Juſtice You muſt call over all the Jury.

Mr. *Hungerford.* I thought they would be all called over once before any one is endeavoured to be ſworn.

Clerk of the Court. They have been called over already.

Mr. *Hungerford.* Not ſince the Court ſat I am ſure: I would know whether the Intention is, that all the Pannel be called over before any one of them is ſworn; or that the Pannel is to be called over but once, and the Jurymen ſworn as they then appear.

L. C. Juſtice. At the *Old Baily* they call them over firſt; and then they call them over again; and as they appear, they are ſworn. But by the Courſe of the Court here, they are called over here before the Court is ſitting, and they mark thoſe that appear. Then they are called over again in Court, and their Appearance and Non-Appearance being marked, they call thoſe over again that did appear. And as one appears, if there is no Objection to him, he muſt be ſworn.

Mr. *Kettlebey.* We pray that the whole Pannel may be now called over in the Order as it ſtands, as well thoſe who anſwered at the firſt Call, as thoſe who made Default.

Priſoner. I have not had a Copy of the Pannel above two Days. Here has been in this Cauſe all the vile Practices ———

L. C. Juſtice. You muſt keep within due Bounds. You are come now to be try'd: But you are not to arraign and challenge every Body elſe; if in a proper Time it appears you have been ill uſed, the Court will do you Juſtice.

Serj. *Pengelly.* If they have any Objection to the Jury, they are to challenge them; they are not to entertain the Court with Speeches before.

L. C. Juſtice. No; it is not proper. Here he is inſinuating Objections, which we cannot examine whether they are true or falſe, on Purpoſe to captivate the People; and, it may be, miſlead them in the Trial of the Cauſe.

Mr. *Kettlebey.* As I came into Court, I obſerved all the Avenues were barricado'd up, and only a narrow Place left on the Stone-Steps; and a Guard there, to keep out whom they do not think fit to let in.

Att. Gen. I know nothing of it; and, I dare ſay, no body will give any Countenance to the hindering either Jurymen or Witneſſes coming into Court, when their Attendance is required.

Mr. *Hunger-*

Vol. vi. p. 246. Mr. *Hungerford.* I deſire, my Lord, the whole Pannel may be called over once before the Priſoner is put to challenge.

L. C. Juſtice. I do not find the King's Counſel object to it.

Jury called over, and the Priſoner makes his Challenge.

Clerk of the Court having called over the whole Pannel, begins, and calls them again. *Heneage Norton*, have you 10 *l.* a Year Freehold and Copyhold in the County of *Eſſex.*

Norton. I have no Freehold, only Copyhold.

[*Then he was ſet aſide.*]

John Wilks. [*asked the ſame Queſtion; as were all the reſt.*]

Priſoner. I challenge him.

Henry Longbotham.

Priſoner. I think his Name is wrong ſpelled; he ſpells his Name with an *o*, and here it is with an *a.*

L. C. Juſtice. If the Copy delivered you agree with the Pannel, it will do.

Clerk of the Court. They are both ſpelled alike.

L. C. Juſtice. Then there is nothing in the Objection.

Priſoner. Then I challenge him.

Richard Waglett.

Priſoner. I don't challenge him.

Att. Gen. I challenge him for the King.

Vol. vi. p. 247. Mr. *Kettlebey.* We humbly inſiſt that Mr. *Attorney* ſhew his Cauſe of Challenge immediately; for I beg Leave to obſerve upon this Pannel, that there are an Hundred and odd Perſons; and if Mr *Attorney* is not obliged to ſhew his Cauſe of Challenge till all the Pannel is gone through, the Act of 33 *Edw.* I. which directs they ſhall aſſign a certain Cauſe of their Challenge, is of little Uſe.

L. C. Juſtice. You know the conſtant Practice is againſt you.

Mr. *Hungerford.* I propoſe it as a Convenience, that Mr. Attorney challenge firſt, and then we will determine after him.

L. C. Juſtice. No; we muſt not do that.

Thomas Howlet.

Priſoner. I challenge him.

Serj. *Pengelley.* If the Priſoner makes any Challenge, it muſt be before he comes to the Book to be ſworn.

Priſoner.

Priſoner. Whenever I make a full Stop, and don't ſay I challenge, you do.

L. C. Juſtice. He ought not to lay his Hand on the Book, till he is allow'd a Juryman.

Mr. *Hungerford.* More hath been challenged for the King than hath been known in any Publick Trial in my Remembrance.

[*Here the Priſoner ſpeaks to a Juryman.*]

Sol. Gen. My Lord, it hath been intimated to the Priſoner once already, that he ought to propoſe his Queſtions to the Court.

L. C. Juſtice. You are to ask no Queſtions yourſelf: If you tell us the Queſtion, we will propoſe it.

Priſoner. Only to know how he ſpells his Name.

Mr. *Hungerford.* My Lord, it will be of ſome little Uſe to him to know how many he hath challenged; they differ in their Computation.

Clerk of the Crown. He hath challenged twenty-eight peremptorily.

Benjamin Rutland.

Priſoner. I deſire he may be asked, whether he doth not farm ſomething under the King, or on the Foreſt? Vol. vi. p. 248.

L. C. Juſtice. If it is ſo, it is no Objection.

Priſoner. I challenge him.

John Milligande.

Priſoner. My Lord, he hath been heard to ſay, that I ought to be hang'd.

[David Martin *called.*]

Mr. *Hungerford.* What have you heard Mr. *Milligande* declare concerning the Priſoner?

Martin. I have heard him ſay, that he hoped he ſhould be hanged; for he believed he was guilty.

[*Mr.* Milligande *was ſet aſide.*]

Priſoner. My Lord, I have very near all my Challenges: I think they may go on as they are called, if Mr. Attorney will challenge no more.

Mr. Attorney. You may go on your own Way, I will make no Bargains with you.

Clerk of the Court. *Nicholas Freeman.*

Priſoner. I challenge him. I think I have done all my Challenges.

Clerk of the Court. You have two more.

Priſoner. Let them take them as they come.

Clerk of the Court. *John Bains.* [*Set aſide by Conſent, becauſe he was infirm.*]

Clerk of the Crown. *William Sandford.* [*Set aſide becauſe he had ſaid, if he was one of the Jury he ſhould be for hanging the Priſoner.*]

The Twelve Jurors ſworn were as follow.

Thomas Clark Gent.	*William Nicholſon* Eſq;
Iſaac Potter Gent.	*Chriſtopher Hill* Gent.
Hezekiah Haynes Gent.	*Robert Barnard* Gent.
John Lowry Gent.	*Thomas Waters* Gent.
Thomas Prat Gent.	*Richard Gray* Gent.
Francis Aylett Gent.	*William Wheatly* Gent.

Clerk of the Court. *Chriſtopher Layer* hold up your Hand. Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted, &c. Your Charge is to enquire, Whether he be Guilty of this High Treaſon in Manner and Form as he ſtands indicted, or Not guilty, &c.

Solicitor-General opens the Indictment.

Mr. *Wearg.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment againſt the Priſoner for High Treaſon. The Indictment ſets forth, &c. [*Here the Subſtance of the Indictment is repeated.*]

Vol. vi. p. 249.

[*Mr. Serjeant* Pengelly *having enumerated the ſeveral Overt-Acts laid in the Indictment, goes on.*]

Gentlemen,

Serjeant *Pengelly*'s Obſervations on opening the Evidence.

IT is unneceſſary when theſe Facts are opened to you, to acquaint you that an Attempt of this Nature, if it had ſucceeded, would have been the Subverſion of the preſent happy Eſtabliſhment, and the Proteſtant Succeſſion, ſo often confirmed by the Conſent of the whole Nation, and the only Security of your Religious and Civil Rights and Liberties. They would have all been expoſed to the arbitary Power of a Popiſh Faction under the Tyranny of the Pretender. [*Then the Serjeant proceeds to open the Evidence, which the Reader will find in the Tryal itſelf.*]

Vol. vi. p. 250.

Att

Att. Gen. MAY it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel on the ſame Side for his Majeſty againſt the Priſoner at the Bar, who ſtands indicted for High Treaſon, in compaſſing and imagining the Death of the King. The Preſervation of the Life of the King is of that great Importance to the Safety and Proſperity of his Subjects, that even Imaginations and Intentions (which are but Acts of the Heart) to take it away, manifeſted by Overt-Acts, are an Offence of the higheſt Nature which the Law takes Notice of: But as Imaginations and Intentions of Men are ſecret, and can't be diſcovered but by their Actions, there muſt be Proof of ſome Fact done, in order to carry ſuch Intentions into Execution, to make the Offenders guilty of Treaſon; therefore in this Indictment five ſeveral Overt-Acts are laid: The firſt is, That the Priſoner propoſed, conſulted, and agreed, with divers Perſons unknown to the Grand-Jury, to raiſe an Inſurrection and Rebellion within this Kingdom againſt his Majeſty: The ſecond, That he publiſhed a traiterous Writing, purporting an Exhortation, Encouragment, and Promiſe of Rewards, to perſwade his Majeſty's faithful Subjects to take up Arms againſt him: The third, That he propoſed, conſulted, and agreed to ſet the Pretender on the Throne by armed Force: The fourth, That he liſted Men to levy War againſt the King: And the fifth, That he propoſed, conſulted, and agreed to ſeize and impriſon his Majeſty's ſacred Perſon.—*Gentlmen of the Jury*, You will readily agree with me, that nothing can be more dreadful to a true *Briton*, who hath any Regard to himſelf or his Poſterity, than the fatal Conſequences that muſt have inevitably attended ſuch wicked Deſigns, had they been carried into Execution with Succeſs. Suppoſe a Rebellion had been only raiſed, what could any Man have expected from a Rebellion in the Heart of the Kingdom, but Plunder, and Rapin, and Murder? a total Suſpenſion of all Civil Rights? and, as long as the Storm had continued, a juſt, but terrible Apprehenſion of ſomething yet worſe to come? This would certainly have been the Caſe, though the Attempt ſhould have been diſappointed at laſt. But had it been attended with Succeſs, had his Majeſty's ſacred Perſon been ſeiz'd and impriſoned, and had the Pretender been

Mr. Attorney-General's Obſervations on the Charge.

Vol. vi. p. 254.

been placed on the Throne, what a Scene of Miſery had opened? A mild Adminiſtration, govern'd by the Law of the Land, under an excellent Prince, and as juſt and merciful as ever wore the Crown, muſt have given Way to arbitrary Power: All your Eſtates and Properties muſt have been at the Will of a provoked and exaſperated Uſurper. Liberty muſt have given Way to Slavery; and the beſt of Religions to Popiſh Idolatry and Superſtition; and this, humanly ſpeaking, without any Proſpect or Hopes of Relief. Nor would theſe dreadful Calamities have been confined within the Bounds of the King's Dominions; for ſhould the preſent happy Eſtabliſhment in his Majeſty and the Royal Family (the chief Bulwark and Support of the Proteſtant Intereſt) be deſtroy'd, the Proteſtant Religion in general muſt be reduced to the loweſt Ebb, if not totally extinguiſhed. This is the Nature of the Crime; and theſe ſome of the fatal Conſequences that muſt have enſued, if the Deſigns charged upon the Priſoner by the Indictment had took Effect. It is my Part to open the Nature of the Evidence that we ſhall produce to prove the ſeveral Overt-Acts. [*Here Mr. Attorney ſhews what Evidence they were about to give.*]

Vol. vi. p. 257.

Sol. Gen. We will now proceed to examine Witneſſes. Call Mr. *Stephen Lynch.*

Objection to the Witneſs that he has a Promiſe of Pardon.

Priſoner. My Lord, I deſire before this Witneſs be ſworn, that he may be examined upon a *Voyez dire*, whether he hath not a Promiſe of Pardon, or ſome other Reward, for ſwearing againſt me.

L. C. Juſtice. Sir, you can't ask that Queſtion.

Mr. *Hungerford.* If a Man is repreſented to be in the ſame Circumſtances with the Priſoner, and the Priſoner led into the ſame Circumſtances by the Perſon propos'd as a Witneſs, and afterwards by him involv'd in the ſame Offence: If the Perſon propos'd as a Witneſs hath a Promiſe of Pardon, or ſome Reward, upon Condition that he would ſwear againſt the Priſoner, he cannot by Law be a good Witneſs: The Perſon propos'd as a Witneſs, muſt be a credible Witneſs, muſt be a legal Witneſs, muſt not be convicted of Perjury, or any other notorious Offence; a free Witneſs that is not under any Reſtraint for the Offence he accuſes another off: And there-

therefore we hope we have a Right of asking whether he acts under the Influence of any Promiſe of a Reward or Pardon; and the Right we have of examining him to the Promiſe of a Reward or Pardon, is ſupported by the Authority of my Lord Chief Juſtice *Hale*, as reported by *Kelynge*.

Mr. *Kettlebey*. I beg leave to obſerve to your Lordſhip, that this Queſtion was formerly ask'd in the Trial of *Gordon* and *Dorrell*, of one *Adams* that had been in the ſame Conſpiracy with thoſe that were brought to Trial for High Treaſon, and was then produc'd as a Witneſs againſt them, though it was long objected to by the King's Counſel. The Diſtinction my Lord Chief Juſtice *Hale* made, was this.— Vol. vi. p. 258.

Mr. *Juſtice Eyre*. Read the whole Paragraph.

Mr. *Kettlebey*. I will, My Lord. The Words are theſe: "It was reſolv'd that ſome of thoſe Perſons, equally culpable with the reſt, may be made uſe off as Witneſſes againſt their Fellows; and they are lawful Accuſers or Witneſſes within the Statute 1 *Edw.* VI. 12. 5 & 6 *Edw.* VI. 11. & 1 *Mary* I. And accordingly at the Trial of theſe Men, ſome of them who were Parties in the Treaſon were made uſe of againſt the reſt. For lawful Witneſſes within thoſe Statutes, are ſuch as the Law alloweth; and the Law alloweth every one to be a Witneſs who is not convicted, or made infamous for ſome Crime; and if it were not ſo, all Treaſons would be ſafe; and it would be impoſſible for one who conſpires with never ſo many Perſons, to make a Diſcovery to any Purpoſe. But the Lord Chief Baron *Hale* ſaid, that if one of theſe culpable Perſons be promis'd his Pardon, *on Condition to give Evidence againſt the reſt*, that diſableth him to be a Witneſs againſt the others, becauſe he is brib'd, by ſaving his Life to be a Witneſs: So that he makes a Difference, where the Promiſe of Pardon is to him for diſcloſing the Treaſon, and where it is for giving of Evidence. But ſome of the other Judges did not think the Promiſe of Pardon, if he gave Evidence, did diſable him; but they all advis'd, that no ſuch Promiſe ſhould be made, or any Threatnings uſed to them, in caſe they did not give full Evidence." So that, My Lord, we have not only the Authority of that Book with us, but a ſolemn Precedent in

this Court in Point eſtabliſh'd upon a long Debate, and grounded on that very Authority. And when I mov'd this Matter at the Trial of *Dorrel*, *Gordon*, and *Kerr*, I then cited another Inſtance where it had been allow'd by the Court; and that was before Mr. Juſtice *Powel*, at *Worceſter* Aſſizes, upon the Trial of *Palmer* and *Symonds*, for the Murder of Mrs. *Palmer*. There a third Perſon, concerned in the Fact, came in as a Witneſs againſt the other two; and after it had been argued by Counſel, and that learned Judge had read upon the Bench, and conſider'd this Authority, the Witneſs was at laſt ask'd this Queſtion upon a *Voyer dire*.

Serj. *Pengelly*. We hope there is no Room for this Pretence, which is inſinuated; it only goes to his Credit, and does not diſable him from being a Witneſs. The Judges directed that no ſuch Promiſe ſhould be made; but if ſuch Promiſe was made, they agreed it did not diſable him, as was mention'd by my Lord Chief Baron *Hale*. It is not like Money given, which is an actual Corruption; the Promiſe of Pardon is a Thing voluntary in itſelf. Who is the Promiſe to be made by? Is it in the Power of any Perſon but his Majeſty to perform it? If there is any Thing in the Suppoſition, it is not proper to ask in relation to it upon a *Voyer dire*, to prevent the Witneſs from being ſworn to give Evidence, but when he hath been ſworn, if they think fit to ask the Queſtion they may.

Att. Gen. The asking the Witneſs this Queſtion, if it was anſwer'd in the affirmative, would be of no Service to the Priſoner; for it will not diſable Mr. *Lynch* from being a Witneſs. Every Man is bound in Juſtice to give Evidence, if requir'd; and a Promiſe to have a Pardon if he gives Evidence againſt the Priſoner, can be look'd on only to induce him to do that which by Law he ought to do according to the Truth; it does not import, that he was to give a wrong or a falſe Evidence; ſuch a Queſtion he cannot be oblig'd to anſwer. And the greateſt Uſe the Priſoner could make of ſuch a Promiſe, if it was made, which is not admitted, would be only to the Credit of the Witneſs, and not entirely take off his Teſtimony. As to the Opinion of my Lord Chief Baron *Hale*, cited out of *Ke-*

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dge, the other Judges differ'd with him; and therefore we hope Mr. *Lynch* ſhall be ſworn.

Mr. *Hungerford*. Whoever is produc'd in a Court of Juſtice for a Witneſs, muſt appear to be utterly unconcerned in Point of Intereſt, in conſequence of the Trial. If a Man produc'd as an Evidence to prove the Debt upon the Defendant, ſhall, upon being examined upon a *Voyer dire*, diſcloſe that he is to have Part of the Money to be recover'd, is not ſuch a Perſon diſabled from being a Witneſs at all? And is not a Promiſe of Pardon to the Witneſs, in caſe he convicts the Criminal, a greater Biaſs than the Witneſs's having Part of the Money recover'd? In a civil Cauſe, the Queſtion is not whether the Witneſs be tempted to ſwear a Truth or Falſhood, but whether the Witneſs doth not appear to be ſo far concern'd in Point of Intereſt, that he ought not to be examin'd at all; and therefore I inſiſt, we ought to have an Account whether the Witneſs *Lynch* hath the Promiſe of a Pardon or any Reward for that which he is to do here, namely, for the Evidence he is to give againſt the Priſoner. It is indifferent to me whether it will diſable him from being a Witneſs abſolutely, or go to his Credit only; for if it ſhould come out that he hath ſuch a Promiſe, we ſuppoſe no Jury, or any Man living, will believe him; and that is much the ſame as if he was not produc'd, though it ſeems more agreeable to the Practice in Civil Caſes, that he ſhould not be admitted as a Witneſs at all. Vol. vi. p. 259.

L. C. Juſtice. The moſt you can make of it is, That it is an Objection to his Credit; and if it goes to his Credit, muſt he not be ſworn, and his Credit left to the Jury? But if this Man, under Expectation and Promiſe of a Pardon, comes here to ſwear that which is not true, and you would ask him to that, he is not oblig'd to anſwer it. No Body is to diſcredit himſelf; he is to be taken to be innocent till he appears otherwiſe. It is expreſs'd, that he has a Promiſe of Pardon. What to do? To give Evidence; why ſhould he not? Is he not oblig'd to it? Suppoſe he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The moſt you can ſay is, he has a Promiſe of Pardon, if he gives Evidence; and can you conclude from

thence, that he can give no Evidence, except a falſe Evidence? If they who ask the Queſtion inſinuate any Thing like that, it ought not to have an Anſwer; but if he hath a Promiſe of Pardon, if he gives a true Evidence, it is no Objection to his being a Witneſs, or to his Credit.

Mr. *Juſtice Eyre.* The Objection which gives occaſion to inſiſt upon this Queſtion, ariſes from the Influence which the Hopes of a Pardon may poſſibly have upon the Witneſs; and if this be a Reaſon for ſetting aſide a Witneſs, no Accomplice who diſcovers a Conſpiracy can ever be allow'd to prove it upon Oath; for I believe no Man ever yet made a Diſcovery, but with the Hopes of Pardon; and a Government is oblig'd in Honour to grant it, where the Confeſſion appears ingenuous and ſincere; and therefore if the Hope or Proſpect of a Pardon, which is all that can be inferr'd from a Promiſe, ſhould be an Objection to the Competency of the Witneſs, no Government would be ſafe; for treaſonable Conſpiracies might be form'd and carried on with Impunity, when the Perſons concern'd, from whom alone a full Diſcovery can be had, are utterly uncapable of proving the Fact, though they give all poſſible Marks of their Sincerity; they have therefore been always allow'd to be Witneſſes.

Mr. J. *Powis.* Mr. *Hungerford* would do well to remember the ſeveral Acts of Parliament made to give Encouragement, by a reward of 40*l.* for the Apprehending and Convicting of every falſe Coiner, Highwayman, and Houſebreaker; and if a Criminal in theſe Offences ſhall come in, and diſcover and convict two of his Accomplices, he ſhall be entitled to a Pardon, and by the expreſs Words of the 5 *Annæ*, ſhall have the Reward of 40*l.* for each Houſebreaker, and ſhall alſo himſelf be entitled to a Pardon; ſo that the Parliament thought fit to give Money, as well as a Pardon, to ſuch Diſcoverer; yet ever ſince the making of thoſe Acts, the Perſons ſo promis'd and encouraged have upon thoſe Trials been admitted as good Witneſſes, even before a Pardon.

Mr. J. *Forteſcue.* I was Counſel in the Caſe of the King and *Gordon*; and I very well remember the Counſel of the other Side inſiſted the Witneſs produc'd ſhould be ask'd this Queſtion on a *Voyer dire*,

Vol. vi. p. 260.

dire: His Name was *Mayer.* The Reaſon the Court gave that it was improper to ask this Queſtion on a *Voyer dire*, was, That if he had this Promiſe, ſuch Promiſe was made either to ſpeak the Truth, or to ſpeak a Falſhood; if it was to give a Juſt and True Evidence, there was no harm in it; and if it was a Promiſe of Pardon for ſpeaking what was not true, the Witneſs was not bound to anſwer that Queſtion, and conſequently it can be of no uſe whatever. Therefore the Witneſs muſt be ſworn.

The Priſoner's Objections againſt the Witneſſes overruled.

[*Mr.* Stephen Lynch *ſworn.*]

Sol. Gen. Do you know the Priſoner at the Bar? And how long have you known him?

Lynch. I firſt knew him about the Month of *June* laſt.

Sol. Gen. Pray give an Account to the Court and the Jury, by what Means you firſt came acquainted with him.

Lynch. I became acquainted with him by Dr. *Murphew.* About *April* laſt I came into *England* from *Flanders*, and met with Dr. *Murphew*, who was my Acquaintance ſeveral Years before: He told me he had ſome particular Buſineſs to tell me; and deſir'd me to meet him at *Cooper*'s Coffee-Houſe in *Cornhill*; where I met him: He told me, That material Things were acting in the Kingdom, in order to a Riſing; and if I would be of the Party, he would recommend me to a Gentleman that had the Management of it. I ask'd Time to conſider of it; and in two or three Days Time, I told him that I was reſolv'd to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to. About the Month of *June* he told me, I ſhould go with him to his Lodgings, which were at the Upper-end of *Chancery-Lane*, right over-againſt the *White-Hart.*

Sol. Gen. Whoſe Lodgings did you go to?

Lynch. The Lodgings of Mr. *Layer.* He was at home; and deſir'd us to go to the *Griffin* Tavern in *Holborn*, and he wou'd meet us there. We went; and in a little while Mr. *Layer* came to us; and then Dr. *Murphew* told him that I was the Gentleman he had ſpoke to him of. Mr. *Layer* was glad of my

my Acquaintance; and told me, that he had ſuch a ſtrong Recommendation of me, that he was fully ſatisfied in me. And then he held a Diſcourſe about a Riſing that was to be in the Kingdom in favour of the Pretender, and that it would be back'd by a great many of the Army, and the Guards, and ſeveral other Gentlemen.

Objection againſt giving Evidence of Overt-Acts in another County.

Mr. *Hungerford.* The Overt-Act is laid in *Eſſex*, and here is an Evidence given of an Overt-Act in *Middleſex*. They can give no Evidence of an Overt-Act in another County, till they have given Evidence of an Overt-Act in *Eſſex*, where the Indictment was laid; for by the Method they would go on in, the Jury may be captivated with a Story of the *Griffin* Tavern, and of Mr. *Layer*'s other Aſſignations and Actions in *Middleſex*; which cannot be imputed to him upon this Indictment, until ſome Treaſon be prov'd in *Eſſex*. I hope therefore the King's Counſel ſhall receive your Lordſhip's Directions to go on regularly: To begin to give an Account of the Overt-Acts in *Eſſex* before tney go into another County.

L. C. Juſtice. You muſt give them Leave to go on in their own Method of that that firſt happen'd in *Middleſex*, and afterwards of what happen'd in *Eſſex*; and if you dare not truſt them and us, but will have your own Method, it would be to put us into Confuſion.

Sol. Gen. We inſiſt upon it, in Point of Law, that we are intitled to give Evidence of Overt-Acts of the ſame Species of Treaſon laid in the Indictment, though done in any County in *England*, provided we alſo prove an Overt-Act in the County of *Eſſex*; which we muſt do; otherwiſe this will paſs for nothing. Mr. *Lynch*, go on; and give an Account what Mr. *Layer* ſaid when you were at the *Griffin* Tavern.

Evidence for the King.

Lynch. The firſt Thing he told me, was, That he was glad to meet me. That he had had a good Recommendation of me from Dr. *Murphew*, as being a Man he cou'd confide in; and beginning his Diſcourſe of an Inſurrection in the Kingdom, he told me that they were back'd by a great many of the Army and the Guards. That there was a great many of the Nobility and Gentry of the Country, that would come in to them. He told me then,

That

That he wanted a Man of Reſolution, that would take upon him the ſeizing of ſome Perſon of Note, as a General, or ſome other great Man. The Diſcourſe run all upon the ſame Thing.

Sol. Gen. Recollect, as well as you can, the Particulars.

Lynch. He told me the general Deſign of the Revolution in the Kingdom in favour of the Pretender; and that they were back'd by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me, they wanted a Man of Reſolution to undertake, with ſome others, to ſeize a great Man, as a General, or ſome other great Man. At that Time I took upon my ſelf to do it; ſo at that Time we diſcours'd no more. We were together about half an Hour.

Sol. Gen. When had you the next Meeting? and at what Place?

Lynch. A Day or two afterwards, at the ſame Tavern. When I came there, I ſent a Boy for Mr. *Layer*, as he had order'd me to do when I wanted to ſee him; and he came to me. Then, talking over a Glaſs of Wine, he told me that he had pitch'd upon me to ſeize the Earl of *Cadogan*; and that I ſhould chuſe as many Perſons as I thought fit, who would anſwer the ſame Deſign; and he being the Principal Man in the Army, it would diſcourage the King's Party, and animate the Pretender's Party; which, as I ſaid before, I agreed to undertake, and to do the Utmoſt of my Endeavours to do it. Vol. vi. p. 261.

Mr. Serj. *Pengelly.* What Aſſiſtance was you to have?

Lynch. Such as I ſhould chuſe; ſuch People as I could confide in, and ſhould be proper to aſſiſt me.

Sol. Gen. Was any Thing ſaid at that Time relating to any Perſon, who was to have the Conduct of the Deſign?

Lynch. He told me that there was ſome great Man that did not want Wit, Courage, or Reſolution, and was at the Head of this Affair, who wou'd, at a proper Time, give me an Order to affect ſomething further about it.

Mr. Serj. *Cheſhire.* Was there any other Meeting? and when?

Lynch. Some few Days after I came to the *Caſtle-Tavern* in *Holborn*, and ſent for Mr. *Layer*; who came

came to me; and we talk'd in general about the Uneaſineſs of the Nation, and the fair Opportunity there was to riſe.

Att. Gen. Pray give an Account of what elſe paſs'd.

Lynch. I ſay, the ſame Diſcourſe we had at two Meetings before he repeated, and ſaid, Now is a fair Opportunity, the Uneaſineſs of the People being ſuch, to bring about a Revolution, ſince they would be back'd by the Army, and the Guards, and ſeveral other People.

Serj. *Cheſhire.* Had you any other Meeting?

Lynch. A few Days after, we had ſeveral Meetings at Mr. *Layer*'s Houſe in *Southampton-Buildings*.

Serj. *Cheſhire.* What was the Subject of your Diſcourſe at the ſeveral Meetings?

Lynch. It was always upon the ſame: About the Riſing and Uneaſineſs of the People, and the fair Opportunity of bringing about a Revolution; of the Diſpoſition of the Army and the Guards.

Serj. *Cheſhire.* Did he give you any Encouragement?

Lynch. After I met him at his Houſe in *Southampton-Buildings*, I told him of my Uneaſineſs; becauſe he had told me at the Beginning, that theſe Things would be ſoon put in Execution: I told him, if they were delayed, I was afraid they wou'd not ſucceed. He then animated me by telling me, that there was no Fear of its ſucceeding; and that I ſhould not be diſcouraged; for there was a great Man, a Man of Wit and Conduct, that was at the Helm, and that had the Management of the Scheme: That I ſhould always keep a good Heart; and that Things went on very well.

Mr. *Weſt.* Did he tell you in whoſe Favour this was to be?

Lynch. Yes; in favour of the Pretender; he mention'd him by the Name of King.

Serj. *Cheſhire.* Do you know any Thing of his going into the Country?

Lynch. After I met him at his Houſe, he went into the Country, and ſtaid ſixteen or ſeventeen Days. At his Return, I believe it was in *July*, I went to ſee him, and told him again how uneaſy I was at the Delay. To which he anſwered,

keep

keep a good Heart, all Things go on very well.

Serj. *Cheſhire.* Was you to have any foreign Aſſiſtance?

Lynch. I asked him if he had any Promiſe of any Succour from any Power abroad. He told me, if we once made a Beginning, we ſhould not want them: But did inſinuate, that we ſhould not want Encouragement from the Court of *France.*

Att. Gen. In what Manner did you expreſs your Uneaſineſs?

Lynch. Nothing, but that I was uneaſy; and I was afraid that Things did go wrong.

Sol. Gen. Did you ſay any Thing relating to your own Circumſtances?

Lynch. In the Beginning I told Dr. *Murphew*, becauſe it would be a long while, ſome five or ſix Weeks, before I was to be introduced to Mr. *Layer*'s Company, that I came on my own particular Buſineſs; and my Circumſtances would not permit me to be long here at my own Expence. At the Meeting with Mr. *Layer*, when I firſt made this Complaint to him, Mr. *Layer* told me, I ſhould not want for a ſmall Matter to maintain me in *England.* Accordingly Mr. *Layer* gave me ſome Money.

Att. Gen. How many Times had you Money of him? and what might it amount to together? Vol. vi. p. 262.

Lynch. Five or ſix Times: I cannot recollect; but, I believe, about eight or ten Guineas.

Att. Gen. What was it given for?

Lynch. To keep me in *England*; and to aſſiſt in the intended Deſign of the Revolution.

L. C. Juſtice. When you asked him, if he had any Encouragement from the Army, what did he ſay?

Lynch. He told me, that he had Encouragement from a great many of the Officers of the Army; that he had diſcourſed with ſeveral Serjeants of the Guard, who told him that the Common Soldiers would be glad, after they had made a Beginning, to come in to them.

L. C. Juſtice. Did he give you any Reaſon for this?

Lynch. Mr. *Layer* told me, the Serjeants told him ſo before they were encamped; and complain'd

of

of their ill Uſage and hard Uſage from the *Subaltern* Officers.

Serj. *Pengelly.* Was you acquainted with any Time or Day that was fixed.

Lynch. There was no fixed Time. Mr. *Layer* told me, it was to be upon the Riſing of the Camp; becauſe they could not talk with the Soldiers ſo well while they were encamped, as they could afterwards, when they were in their Quarters.

Serj. *Cheſhire.* Was there any Conſultation of viewing any one's Houſe?

Lynch. He told me, it was fit to go and view the Earl of *Cadogan*'s Houſe in *Pickadilly*, in Caſe it was neceſſary to ſeize that Lord. Accordingly we appointed a Day to go; and I came to his Lodgings; and we took Coach, and away we went; and talking to him about it, he told me, he was very well acquainted with my Lord *Cadogan*, and had ſome Buſineſs with him about an Eſtate which his Lordſhip was about buying. We went to his Houſe; but my Lord was not to be ſpoke with, or was not within: I do not remember which; but we were conducted into his Houſe; we view'd the inner Part of the Houſe. Afterwards we went into the Garden; we viewed the lower Part of the Garden: Then we went out in the Yard, and took a View of the Avenues round about the Houſe.

Serj. *Cheſhire.* Had you any Diſcourſe about the Feazibleneſs of it?

Lynch. Yes; that it was eaſy to be done, if we had but ſome reſolute Gentlemen to ſtand by us.

Serj. *Cheſhire.* Had you any Talk at that Time relating to the *Tower*?

Lynch. He told me, the *Tower* would be immediately ſurrendered to the Party on the Day the Plot was to be put in Execution. A certain Officer of the Guards would take upon him to mount the Guard there, who would facilitate the Delivery of the *Tower* to them. Afterwards, he ſaid, there would be no Doubt of the *Mint*; they would be glad to take the Opportunity to ſhake off their Confinement; and that they would put Arms in their Hands, according as they repaired to their Party.

Att. Gen. When did you ſee the Priſoner next, after viewing my Lord *Cadigan*'s Houſe?

Lynch.

Lynch. I ſaw him at his own Houſe, and at ſeveral Taverns in the City; and once he wrote to me, deſiring me to come to his Lodging. Accordingly I went; and when I came to his Houſe, I met with a little Paper that was left for me, directing me to go to the *Queen's-Head-Tavern* in *Great Queen-Street*, near *Lincoln's-Inn-Fields*, and to enquire there for one Mr. *Wilſon*; which I did; and I was conducted into a Room, where they ſaid Mr. *Wilſon* was, and Mr. *Layer*, and another Man, who ſeemed by his Cloaths to be a Serjeant of the Guards. We ſtaid a little while, talked over the Buſineſs, and drank good Succeſs to the Enterprize.

Att. Gen. Did the Priſoner at the Bar drink it?

Lynch. Yes; he did. I told the Priſoner when he went out, that I was mighty uneaſy at the Delay of this Affair. He told me, I need not be uneaſy, for every Thing went on well; and they had a Nobleman at the Helm, who had Authority from the Pretender, and would loſe no Opportunity when a fit Time offered. Vol. vi. p. 263.

L. C. Juſtice. Did you ask who that Nobleman was?

Lynch. Yes; but he never told me his Name; but ſaid, that I ſhould in a proper Time be preſented to him, and receive my Commiſſion and Orders from him to ſeize my Lord *Cadogan*.

Serj. *Pengelly.* We will now gratify the Priſoner's Counſel with an Account of what happened in *Eſſex*. Pray acquaint my Lord and the Jury when you went out of Town with Mr. *Layer*.

Lynch. My Lord, I was at Mr. *Layer*'s Houſe the Day the Biſhop of *Rocheſter* was ſent to the *Tower*. He asked me, if I would ride abroad with him the next Day, to take the Air? I conſented to it, and came the next Morning to his Houſe; and Mr. *Layer* asked me, if I mounted with Furniture? I told him, No; but that I had a Double-Barrel Fowling-Piece, which, if his Servant would carry, would do as well. He then deſired me to go and ſtay for him without *Aldgate*, and get my Gun ready loaden; for he had that about him, which he would not loſe for any Thing in the World. I went and ſtaid till about Ten or Eleven o'Clock; when Mr. *Layer* met me, and gave the Gun to his Servant to carry. On the Road he told me that we were going to my Lord

North and

North and Grey's, whom he was very well acquainted with; and that he would recommend me to him as a Friend of his. When we got to the *Green-Man* he told me, we had better go in and dine there, becauſe Dinner Time would be over before we could get to my Lord *North and Grey*'s. Whilſt Dinner was getting ready, we had ſeveral Diſcourſes on the ſame Subject, of the Uneaſineſs of the Nation, and its Inclination to a Revolution, and how to bring it about. Upon which he pulled a Paper out of his Pocket, and gave it me to read the latter Part of it. I remember ſome Lines of it, which was, in general, to invite the Nation to an Inſurrection, and to ſhake off the Calamities and Miſeries they endured under the preſent Miniſtry. And it was mention'd in the ſaid Paper, that the Earl of *Cadogan* was actually in their Cuſtody, thereby encouraging the Army to revolt, with an Offer of three Guineas to every Horſeman and Serjeant, and two Guineas to every Corporal, and one Guinea to every Common Soldier, to be paid immediately on the joining the Party, and a Promiſe of further Preferment.

Att. Gen. Do you know whoſe Hand-Writing it was?

Lynch. According to our Diſcourſe, I thought it might be his Writing. He talked of it as being of his own making. Beſides there were ſeveral Interlineations, Daſhings-out, and Interlineations afterwards. He was very well ſatisfied and eaſy as to me; and ſaid he could wiſh that he could bring Matters about ſo, as that I could have the ſole Direction of ſeizing ſome of the Miniſtry, and, namely, my Lord *Townſhend*, my Lord *Carteret*, and Mr. *Walpole*.

Att. Gen. Was there any Diſcourſe about ſeizing the King?

Lynch. He ſaid when the Deſign was put in Execution, the Army would declare in their Favour, and they would ſend a ſtrong Guard to take Care of the King's Perſon, to keep him in Security from any Inſult.

Serj. *Pengelly.* Was there any Diſcourſe about a Scheme or Plan.

Lynch. He told me there was a Scheme laid on that Foot; of which I told you the firſt Step was to ſeize the Earl of *Cadogan*, and then, according as

as the Army came over, to take care and ſeize the King's Perſon; and he thought the proper Time to put this in Execution would be at the Riſing of the Camp in *Hyde-Park*; and when I ſhewed my Uneaſineſs at the long Delay, he told me, if I could think or propoſe any Thing more proper, that I ſhould do it. After that we rode towards *Epping*, and went to my Lord *North and Grey*'s; and there Mr. *Layer* introduced me as his Friend. We ſtaid there all Night, and dined there the next Day. In the Evening we came away in Company with another Gentleman that I did not know; but we talked on the Road about the Situation of my Lord's Houſe; and Mr. *Layer* told me he had recommended me to his Lordſhip as his particular Friend, and asked me how I liked my Lord *North and Grey*?

Mr. *Reeve*. Had you any talk with him about the Perſon who was to have the chief Command?

Lynch. Yes; but he never named the Perſon.

Mr. *Weſt*. Was you any other Time at my Lord *North and Grey*'s?

Lynch. Yes; another Time I went to my Lord *North and Grey*'s, where I found Mr. *Layer*, and expreſſed to Mr. *Layer* the Uneaſineſs I was in at the long Delay; and that I was afraid our Hopes would vaniſh; and told him, that if Things were not ſoon put in Execution, I would withdraw myſelf. Mr. *Layer* bid me not be uneaſy, Things might perhaps be ſooner put in Execution than I imagined. Vol. vi. p. 264.

Mr. *Weſt*. Did you come Home together?

Lynch. No; I came home that Night: Mr. *Layer* remained there.

Serj. *Pengelly*. Did you ſee him ſometime afterwards?

Lynch. I met him at his own Houſe; where expreſſing my Uneaſineſs, as formerly, he ſaid I ſhould not be uneaſy, for Things would ſoon take Effect; and bid me get myſelf ready to execute my Deſign, becauſe they had Notice the Camp would ſoon break up; which was the Time deſigned to put Things in Execution. And at another Time he told me, that the Declaration which he had ſhewn me at the *Green-Man* had mentioned no particlar Perſons, but in general the Safety and Publick Good of the Kingdom. There was nothing mentioned of the Pretender in it; but that he had thought fit to put it

now in the Pretender's Name; and he told me he had given the Declaration to a nonjuring Miniſter to get printed, and had given twenty Guineas for that Purpoſe.

Serj. *Cheſhire.* When you expreſſed your Uneaſineſs, did Mr. *Layer* uſe any Vehemence of Expreſſion?

Lynch. He ſaid ſeveral Times, when I was ſo irreſolute and uneaſy: Don't you be uneaſy; rather than all ſhould fail, I will ſtir up, and be a ſecond *Maſſinello.*

Mr. *Weſt.* Had you any Converſation about the taking up of any Perſon?

Lynch. He only told me at that Time, that if the Nobleman at the Head of Affairs ſhould be taken up, every Thing would be quaſhed.

Serj. *Pengelly.* That Nobleman was not taken up at that Time then?

Lynch. No.

Serj. *Pengelly.* What Recommendation had you to my Lord *North and Grey.*

Lynch. Only as a Friend of Mr. *Layer*'s, to paſs away the Time in Summer.

Mr. *Hungerford.* If they have given all the Evidence they intend to give of an Overt-Act in *Eſſex*, for on that depends the Fate of this Gentleman at the Bar, I hope we are now, before they ſhall be permitted to give Evidence of any farther Overt-Act of Treaſon in another County, at Liberty to object, That the Tranſaction in *Eſſex*, is not an Overt-Act at all of the Treaſon laid in this Indictment.

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Sol. Gen. When we have given our Evidence, then it will be proper to make their Objections to the Whole.

Mr. *Kettlebey.* Will your Lordſhip indulge us to ask the Witneſs a Queſtion or two now?

L. C. Juſtice. Propoſe your Queſtions, and we will tell you.

Mr. *Kettlebey.* Whether he hath any Offer or Promiſe of Pardon propoſed to him to induce him to give Evidence againſt the Priſoner.

Lynch. No, Sir; I have no Promiſe of Pardon at all. I only do this out of Juſtice, to make what Reparation I can, and to ſave the Blood of many People.

Mr.

Mr. *Kettlebey.* I think you ſay the firſt Time you were introduced into this Gentleman's Company, he told you he had great Deſigns in hand; that there was an Inſurrection deſigned; and that they wanted a Perſon of Reſolution to ſeize a General: How came you to have that Share of Confidence in a Man you never ſaw before.

Lynch. I told you I diſcourſed with Dr. *Murphew* a great many Days and Weeks, before I ſaw Mr. *Layer*, about the Inſurrection; and that he told me he would recommend me to a Man who had the Management of the greateſt Part in this Affair; and when it was a proper Time he would introduce me to him.

Mr. *Kettlebey.* How came you to have that mighty Dependance on Dr. *Murphew*? I hope you was not in any wicked Deſign with him, and ſo much acquainted as to recommend you in a Caſe of Treaſon.

Lynch. We had been acquainted ſeveral Years: There was a common Friendſhip between us.

Mr. *Kettlebey.* How long was you at the *Green-Man* with Mr. *Layer*? an Hour, or two, or three?

Lynch. I can't ſay we were there an Hour or two; but we had ſomething dreſs'd for Dinner; and the Matter was diſcourſed of by us before Dinner.

Mr. *Kettlebey.* What Room was you ſhewn into.

Lynch. We were ſhewn into a Room up one Pair of Stairs on the Right Hand, the firſt Room. It looked into the Common Road.

Mr. *Kettlebey.* Did not you look out of the Window, and ſay you ſaw two Gentlemen of your Acquaintance, and go down to them?

Lynch. I ſaid, I ſaw two Gentlemen I thought I had ſeen before, but did not go down to them.

Priſoner. How long were we together at the *Green-Man*? were the Horſes put up?

Lynch. I can't tell.

Priſoner. Was there any Thing dreſs'd for our Dinner but a Beef-Steak?

Lynch. No; nothing elſe.

Priſoner. Did not you go down Stairs?

Lynch. I went twice down Stairs before Dinner; but did not ſtay two Minutes both Times.

Priſoner. Was this Diſcourſe before or after Dinner?

Lynch. It was before Dinner.

Priſoner. How much Time did we ſpend before Dinner? half an Hour, or an Hour?

Lynch. I don't remember; but it was a good while.

Priſoner. At the Time of Dinner, was my Servant or the Drawer in the Room?

Vol. vi. p. 266. *Lynch.* Neither of them was in the Room.

Mr. *Hungerford.* Have you any Copy of the Paper he gave you to read.

Lynch. No.

Mr. *Hungerford.* Was the whole of it of any Length.

Lynch. To the beſt of my Remembrance, it was a common Sheet of Paper written: He doubled it down, and gave me only the latter Part of it to read.

Priſoner. Was not the Paper blotted?

Lynch. There were two or three Places interlined.

Mr. *Hungerford.* We hope they ſhall not give Evidence of Overt-Acts out of the County of *Eſſex*, till they have gone through their Proofs in that County.

L. C. Juſtice. You have been told they ſhould proceed in their own Method.

Att. Gen. He talks ſo loud to his Counſel, the Jury may hear every Word he ſays: I heard him ſay, It was ſtrange to go on with Evidence that would not be to the Purpoſe.

L. C. Juſtice. You have a Right to diſcourſe with your Counſel, Mr. *Layer*; but you muſt do it in ſuch a Manner that the Jury do not hear.

[Matthew Plunket *ſworn.*]

Mr. Serj. *Cheſhire.* Tell the Court if you know the Priſoner at the Bar, and how you came acquainted with him.

Plunkett. One Major *Barnwell* firſt brought me acquainted with Mr. *Layer*. He had an Execution in his Houſe; and this Major *Barnwell* came to me, and deſir'd me to get a Couple of Grenadiers. I brought him two. We went to Mr. *Layer*'s Houſe; and his Clerk let us in at the Back-Door; and the Grenadiers

Grenadiers turn'd the Officers out, and Mr. *Layer* gave them a Crown and a Glaſs of Brandy. This was about five Years ago. Afterwards Major *Barnwell* was arreſted; and ſent me with a Letter to Mr. *Layer*'s Houſe, to deſire him to relieve him. This was four Years ago.

Serj. *Cheſhire*. Do you know any Thing of one *James Plunket*?

Plunket. Yes; he came to me from Mr. *Layer* in *July* laſt, to deſire me to meet him. I don't know what he is, nor how he gets his Bread.

L. C. Juſtice. Go on.

Plunket. Mr. *Layer* paid the Charges for Major *Barnwell*; and brought him out of the *Marſhalſea*.

Mr. *Reeve*. How came you laſt acquainted with Mr. *Layer*?

Plunket. In *July* laſt *James Plunket* came to my Room; and asked me if I was not well acquainted with the Army? Yes, ſaid I, I know a great many in the Army, both Officers and Soldiers. Do you know, ſaith he, any Serjeants of the Guards? I know ſome of them, ſaid I. He brought me out of the Room, becauſe my Wife was there; and then he opened his Mind to me; ſaith he, Do you know Mr. *Layer*? I had forgot the Gentleman, being ſo ſlightly acquainted with him: No, ſaith I, I don't know him. No matter, ſaith he, I have appointed a Place for you to meet him at, at the *Italian* Coffee-Houſe in *Ruſſel-Court*; and at the End of this, Mr. *Plunket* asked me to keep Correſpondence with them for the Pretender's Service. I did not go to the *Italian* Coffee-Houſe, not being in a proper Station, nor having Money for that purpoſe, ſo I did not think proper to go to the *Italian* Coffee-Houſe; but the *Sunday* following I went to St. *Andrew*'s-*Church* to hear Dr. *Sacheverel*; and as I was going home, between Twelve and One o' Clock, I met Mr. *Layer* accidentally in *Lincoln's-Inn-Fields*: Mr. *Layer* look'd at me: He was really a perfect Stranger to me, for I did not know him again; ſaith he, Is not your name *Plunket*? Yes, ſaith I. Was there not one with you t'other Night, one *James Plunket*? Yes, Sir, ſaid I. Where did he deſire you to go? ſaid he. I anſwer'd, he deſir'd me to go to the *Italian Coffee-Houſe* in *Ruſſel-Court*. Saith he, 'Tis well enough: Do you not know me? No, ſaith I;

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I; you have the Advantage of me: I ask your Pardon for I don't remember you. Don't you remember one *Layer*, ſaid he? Then I call'd to Mind that I knew the Gentleman. Saith he, will you walk on this Side? I walk'd back again towards *Little-Turn-Stile*, and we ſtruck up the Wall-ſide, and juſt as we came under a great Coach-Houſe Gateway we went in, and in the Gateway he talk'd to me: Saith he, I am told you are a very Honeſt Man, and well affected So and So.

Mr. *Reeve*. Well affected to whom?

Plunket. Well affected as to the Buſineſs of the Pretender. At the ſame Time he bid me not mention it to *James Plunket*, that I had ſeen him. Then he asked me if I knew any Serjeants in the Guards; for, ſaith he, I want ſuch old Soldiers as you are yourſelf, that could diſcipline a Mob, for we have other Men enough amongſt us; but if we could get ſome old Soldiers, if that could be managed, they would be finely rewarded. But, Sir, ſaid I, the Pretender is a *Papiſt*. Says he, we had as good have a *Papiſt* for our King as a *Lutheran*; I don't know what Difference there is; but as it was, the Nation was enſlav'd, and the People were obliged to be Slaves. I ask'd him, Sir, Who is the Promoter of this, that may join us? You ſee, ſays he, what Injuſtice is done to you; you have ſerv'd abroad, and others are put over your Head; you have had and found great Hardſhips. I asked him who promoted this? He ſaid, the Lord *North and Grey*. Says I, He is a Peer of the Realm. Saith he, He is a fine General. He ask'd me what I thought of him? I ſaid, I had never been under his Command; but I look'd upon him to be a great Man. Then he mention'd my Lord *Strafford*, What do you think of him? To which I made the like Anſwer. And what do you think of General *Primroſe*? I ſaid, he was an old Man; however, Mr. *Layer* ſaid he was a brave General. Then he ask'd me what I thought of General *Webb*? I ſaid, I had heard of his Fame.

L. C. Juſtice. Did he tell you how many Soldiers he wanted? or was there any Thing ſaid about their Names?

Plunket. I ſaid, I knew a great many, and that I could get Twenty-five. Saith he, You ought to have a Liſt of their Names where they lodge, that they

they may be in Readineſs for a Call; and, ſaith he, this would have gone on ſome Time ago, only ſomebody made a Diſcovery of it to the *French* Ambaſſador, and he wrote to the Regent, and ſo it was diſcovered to the King; and, ſaith he, the Duke of *Ormond* was to come in one Ship, and General *Dillon* in another; and they would bring their Numbers with them; and then I ſhould ſee that the Army would not oppoſe them; and when I parted with him he gave me Half a Crown, to encourage me, and ſaid he would ſend a Meſſenger to me. And in a Day or two after there came a Meſſenger, a Unjuring Miniſter, his Name was *Jeffereys*; but I was not at home; he ſpoke with my Wife. Five or ſix Days after he came again, and asked me if I knew Mr. *Layer*? I told him I did. Then he carry'd me to the *Caſtle-Tavern* in *Drury-Lane*, and gave me two Pints of Wine. He told me he was employ'd by Mr. *Layer*, to go to ſuch as I was, who were old Serjeants, to get a parcel together to diſcipline Citizens and other Mob in the Country. Vol. vi. p. 268.

Att. Gen. What farther paſs'd between you and Mr. *Jeffereys*?

Mr. *Kettlebey.* I beg leave to Object to that Queſtion.

L. C. Juſtice. You know that many Times in Diſcourſe, it is neceſſary to mention Introductions to let in what is material: Whatever paſs'd between him and *Jeffereys* don't affect your Client.

Mr. *Hungerford.* It is a conſtant Rule, if a Man ſpeaks of a third Perſon's Tranſactions, it is declared as nothing, and commonly ſtopt from being given in Evidence.

L. C. Juſtice. Let the Evidence be given in ſuch a Manner as may be underſtood; what is Introductory goes for nothing, but is in order to explain the Evidence.

Att. Gen. What paſs'd between you and the Nonjuring Parſon at the *Caſtle-Tavern*.

Plunket. He deſir'd me to get Men in Readineſs; and told me he had a great many to go to, beſides me, with this Errand. Another Time he came to me, we went to the *Cock and Bottle Ale-Houſe* in the *Strand*, and gave me Half a Guinea; and ſaid, There is a Token; Mr. *Layer* had ſent it me, to give me Encouragement; and Mr. *Layer* had told me

he would ſend me Money by the Meſſenger. Some Time after I met Mr. *Layer* at the *Caſtle-Tavern* in *Drury-Lane*. He call'd for two Bottles of Wine; and when he had diſcours'd me about the Affair, he gave me a Crown to encourage me to Liſt Men for the Pretender.

Att. Gen. Had you a Letter by the Penny-Poſt?

Plunket. That Morning Mr. *Layer* was going into *Norfolk*, *Plunket* told me he would be glad to ſee me. I went to Mr. *Layer*, and his Horſes were at the Door. He deſir'd me to walk up two Pair of Stairs forwards, and by the ſame Token, order'd his Servant to charge his Blunderbuſs in the Room. Saith Mr. *Layer*, I have given a Guinea to the Nonjuring Miniſter to give you, to do what Service you can; and when I am abroad you may be ſure I ſhall not be idle. I brought *John Child*, an old Soldier, with me to Mr. *Layer*'s, thinking he might have been of Service to them.

Serj. *Pengelly.* What did Mr. *Layer* deſire of you?

Plunket. He deſir'd me to ſee and get what Soldiers I could for him: I came to the Nonjuring Miniſter, and told him I had got five and twenty. Mr. *Layer* ask'd me, why I did not bring a Liſt of them, that he might know where their Habitations were, and they might be in a Readineſs at the Time? I diſputed with Mr. *Layer* what they would do for Arms. No fear of Arms, ſaid he, Arms will be provided for them. After he returned out of the Country, Mr. *Plunket* came and told me Mr. *Layer* was come to Town; and the Nonjuring Parſon ſent me a Letter by the Penny-Poſt. Mr. *Child* was in my Room; and read it: The Contents were, *Mr.* Layer *is come to Town, and would be very glad to ſee you: No more, but your humble Servant* William Jeffereys. By this I knew his Name. I went to Mr. *Layer*'s Houſe; and he gave me a Guinea with his own Hand, and I recommended Mr. *Child* to him.

Vol. vi. p. 269. Mr. Serj. *Pengelly.* What did *Layer* ſay, when you recommended Mr. *Child*?

Plunket. He ſaid, he had no Buſineſs for him.

Serj. *Pengelly.* Did you ever receive any Money to give to *Child*?

Plunket.

Plunket. I receiv'd Half a Guinea of Mr. *Layer*, to give to Mr. *Child* to be truſty to him, and to be a Pretender's Man, whom he call'd King.

Serj. *Pengelly.* Had you any Talk with him any other Time.

Plunket. The *Sunday* before he was taken up, I was with him in his Parlour, and he ſaid, the King, meaning the Pretender, was as fine a Shooter as any in *Europe*, he ſhot Nineteen out of Twenty. I ſaid that was fine Shooting.

Att. Gen. Can you recollect any other Diſcourſe there was at that Time?

Plunket. Yes; I ask'd him what Rewards thoſe Men would have, who ſhould do ſervice for their King and Country. He told me, That they and their Families were to be for ever taken Care off. He ſaid, if I would follow his Directions, he would promote me: That he would engage to do great Matters for me; and what I ſuffer'd in the Army, he would make me amends for.

Serj. *Pengelly.* Had you any Diſcourſe about the Diſpoſition of the Nation, or any Perſons at Court?

Plunket. He ſaid, moſt of the Nation was tired with the preſent Government. That King *George* was for ruining the Nation: There were but only eight or nine Upſtarts that belong'd to King *George*'s Court: That the antient Peers of the Realm would not be run down; for they ſhould be made Slaves, if they did not prevent it.

Serj. *Pengelly.* Had you any Diſcourſe any other Time about the *Dutch*, or the *French*?

Plunket. Yes; I remember he ſaid, Here is a *Dutch* Army come in upon this Nation; and the *French* will come in, and take our Rights and Liberties from us: You will keep a *Dutch* Army; and it will be to make a War among ourſelves.

Serj. *Cheſhire.* What would he have to cure all this?

Plunket. He told me, That when the Inſurrection was, there would be a great many Half-Pay Officers as I knew, that would be on the Pretender's Side.

Priſoner. You ſay your firſt Acquaintance with me, was by Major *Barnwell*?

Plunket.

Plunket. Yes; Major *Barnwell* ſent me to get a Couple of Grenadiers; and you order'd your Clerk to let them in at the Back-Door; and the two Grenadiers drove out the Officers, and were confined afterwards in the *Savoy* for it.

Priſoner. Was it the Landlord's Goods of the Houſe, or my Goods?

Plunket. I can't tell whether they were yours or his: They were in your Houſe.

Priſoner. You ſay five Years afterwards I met you in *Lincoln's-Inn-Fields*, and gave you half a Crown to drink, and I told you my Lord *North and Grey* was to be General; that my Lord *Strafford* was concern'd in it.

Plunket. No; you told me they were Promoters of the Conſpiracy.

Priſoner. So you did not know me, nor I you?

Plunket. Yes; you knew me. Afterwards we met one another, ſays you, Don't tell *Plunket* you met me.

Priſoner. Where lives *James Plunket*?

Plunket. I don't know.

Priſoner. Did not you come to my Houſe ſome Time after this, and deſire me to lend you thirteen Shillings, on Account of being Bail in an Action in the Marſhal's Court?

Plunket. That was two Months after. There was a Soldier arreſted by a Martial's Court Writ, and you lent me thirteen Shillings, in order to diſcharge him.

Priſoner. Did you never borrow any Money of me?

Plunket. I never borrow'd any Money of you, otherwiſe than to get Men liſted for the Pretender.

Mr. *Kettlebey.* What Diſcourſe had you with *James Plunket* the firſt Time he came to you? Did he talk to you about liſting Men for the Pretender?

Vol. vi. p. 270. *Plunket.* No; he only deſir'd me to meet Mr. *Layer* at the *Italian* Coffee-Houſe.

Mr. *Kettlebey.* What Diſcourſe had you with the Nonjuring Parſon? The Unjuring Parſon, as you call him.

Plunket. The ſame Diſcourſe paſs'd between us, about liſting Men.

Mr.

Mr. *Kettlebey.* What! the firſt Time you ſaw *James Plunket*, and the firſt Time you ſaw the Nonjuring Parſon?

Plunket. Becauſe he came from Mr. *Layer.*

Mr. *Kettlebey.* So you truſted both of them at firſt Sight? and talk'd to 'em about liſting Men for the Pretender?

Plunket. Yes; both talk'd to me.

L. C. Juſtice. Did the Nonjuring Parſon tell you his Name the firſt Time?

Plunket. He told me his Name was *Jeffereys*; but did not tell me his Chriſtian Name.

L. C. Juſtice. How long after was it the Letter was ſent you by Mr. *Jeffereys*?

Plunket. About ten Weeks after, when Mr. *Layer* came from the Country.

Mr. *Kettlebey.* How came you to remember the Contents of the Letter ſo exactly?

Plunket. I heard it repeated over.

Mr. *Kettlebey.* Pray repeat it over again.

Plunket. Mr. Plunket, *Mr.* Layer *is come to Town; I ſhould be very glad to ſee you.*

Mr. *Kettlebey.* You can read Writing?

Plunket. No; I cannot.

Mr. *Kettlebey.* How can you be ſo particular as to the Writing?

Plunket. John Child read it over to me two or three Times.

Priſoner. What Countryman are you?

Plunket. An *Iriſhman*; you knew that long ago.

Mr. Serj. *Pengelly.* We ſhall now produce the Plan of this Conſpiracy.

[John Turner, *one of the Meſſengers, ſworn.*]

Att. Gen. Look upon theſe Papers; do you know where they were found?

Turner. My Lord, by Warrant from my Lord *Carteret*, principal Secretary of State, dated the 29th of *September* laſt, I was directed to ſearch for one Mrs. *Maſon* and Mrs. *Cook*; and on the very ſame Day I executed that Warrant. I found out Mrs. *Cook*'s Houſe in *Stone-Cutters-Yard* in *Little Queen-Street*, near *Lincoln's-Inn-Fields*; Mrs. *Maſon* lodg'd there; and in her Lodging I found a Trunk, which upon

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upon Demand ſhe opened; and in the Trunk were two Bundles of Papers ſeal'd up; which Papers being opened, this Paper was found amongſt them, [*pointing to the Plan or Scheme.*]

Serj. *Pengelly.* How do you know it to be the ſame?

Turner. I ſet my Mark upon it. [*The ſame he depoſed of all the other Papers found in the two Bundles.*]

Mr. *Juſtice Forteſcue-Aland.* Were the Bundles ſeal'd up?

Turner. They were ſeal'd up when we took them out of the Trunk.

Mr. *Kettlebey.* How come you to be ſo poſitive, that theſe individual Papers are the ſame you found in Mrs. *Maſon*'s Room?

Turner. I put my Name upon them.

Mr. *Kettlebey.* Did you put your Name on them before you parted with them?

Turner. After the Trunk was open, and the Bundles open'd, finding Papers of Conſequence, I was directed to fetch Mr. *Stanyan*, as being a Magiſtrate, to give that Perſon her Oath. While I was gone, I deliver'd the Papers into my Brother Meſſenger's Hands, and he ſign'd them.

Mr. *Kettlebey.* How long after your firſt ſeizing the Papers was it, before you put your Name upon them?

Turner. I believe three Quarters of an Hour.

Mr. *Kettlebey.* How can you ſwear they are the ſame, when you went away and left them in your Brother Meſſenger's Hands, and did not ſet your Name upon them till you return'd?

[Edward Speare, *the other Meſſenger*, ſworn.]

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Att. Gen. Did you go with Mr. *Turner* to ſeize any Papers at Mrs. *Cook*'s Houſe?

Speare. By Warrant directed to us by my Lord *Carteret*, Mr. *Turner* and I were to ſeize Mrs. *Cook* and Mrs. *Maſon*; and ſearching Mrs. *Cook*'s Houſe, I found Mrs *Maſon* there, and in her Room a Trunk, which I order'd to be open'd, and took two Parcels out of it, one of them was ſeal'd with three Seals, which I look'd at: They did not appear to have been open'd, and ſeal'd again. I open'd them and mark'd

mark'd them. Mrs. *Maſon* was by when I open'd them; and theſe are the very Papers that were taken out of the Trunk.

Serj. *Cheſhire.* Were they ever out of your Cuſtody, till you mark'd them?

Sol. Gen. While *Turner* was gone for Mr. *Stanyan*, who had the Cuſtody of them?

Speare. I had the Cuſtody of them.

L. C. Juſtice. How long after he return'd, did you ſet your Name on them?

Speare. Immediately, my Lord.

Mr. *Kettlebey.* How long after you ſeiz'd thoſe two Bundles was it, before Mr. *Stanyan* came to you?

Speare. I believe about half an Hour, or three Quarters of an Hour.

Mr. *Kettlebey.* What did you deliver them to Mr. *Stanyan* then?

Speare. After Mr. *Turner* and I had ſign'd them, I delivered them to Mr. *Stanyan.*

[*Mrs.* Elizabeth Maſon *ſworn.*]

Att. Gen. Give an Account what you know of theſe Papers?

Mrs. *Maſon.* Mr. *Layer* deliver'd me the largeſt Bundle; and told me it was of the Value of two hundred Pounds; and deſir'd me to take care of it.

Serj. *Cheſhire.* When was the leſſer Bundle deliver'd you?

Mrs. *Maſon.* Some Time after. And after that he took them away from me; and in four or five Days Time he brought them to me again; and told me they were a few Love-Letters, and begg'd of me not to let Mrs. *Cook* know of it, for ſhe would make a Diſturbance, and tell his Wife. They were both ſeal'd; and I put them in my Trunk. In the Beginning of *Bartholomew-Tide*, he came in the Afternoon to our Houſe, and I was not at home. He left a Meſſage for me, that I ſhould bring thoſe Writings home. I carried them home to Mr. *Layer*'s Houſe. He had left Word he would be at home by Eight o'Clock at Night. I was there about Eight o'Clock; and the Maid told me, he was in the Back-Parlour with a Gentleman or two; but he came out to me, and I gave him the Writings. He deſir'd

ſir'd me to come again the next Morning, and take thoſe Writings again, for he was going out of Town; which accordingly I did about Eleven o'Clock, as
Vol. vi. p. 273. the Bell was ringing at *Lincoln's-Inn* Chappel, and he deliver'd me the Papers again.

Sol. Gen. What Day of the Week was it?

Mrs. *Maſon.* It was on Friday Night that I carried them to his Houſe; and the next Morning at Eleven o'Clock he deliver'd the Writings to me again, and deſir'd me to take care of them.

Serj. *Cheſhire.* Did you meddle with them, or open them?

Mrs. *Maſon.* No; I put them in my Trunk, and they lay there all the Time.

Serj. *Cheſhire.* Was you there when the Bundles were open'd?

Mrs. *Maſon.* Yes; and I mark'd the Papers.

Serj. *Cheſhire.* Look upon the Papers, and ſee if you find your Mark on them.

Mrs. *Maſon.* Yes; this is my Mark.

Mr. *Hungerford.* Can you write?

Mrs. *Maſon.* No.

Mr. *Hungerford.* Have you made the ſame Mark on all the Papers?

Mrs. *Maſon.* I was ſo frighted at that Time, that I hardly knew what Mark I made.

Mr. *Hungerford.* If you was ſo frighten'd, and did not know what Mark you made, how can you be ſure you know your Mark again?

Mrs. *Maſon.* Yes; I can tell it very well.

Mr. *Hungerford.* Upon the Oath you have taken; hath any Body ſeen thoſe Papers before they were taken by the Meſſengers? whether Sir *John Meers*, or his Man *Thomas*, hath ſeen them?

Mrs. *Maſon.* No.

Mr. *Kettlebey.* Nor his Man *Thomas*?

Mrs. *Maſon.* No; nor his Man *Thomas.*

Mr. *Kettlebey.* Pray make the Mark you generally uſe. I deſire ſhe may have a Pen and Ink, to ſee if ſhe can make the ſame Mark again.

[*A Pen, Ink, and Paper, is given her; and ſhe ſets her Mark, an* E *and* M.]

L. C. Juſtice. [*Having compar'd the Letters made by Mrs.* Maſon *in Court with thoſe on the Papers.*]

Papers.] The Character which ſhe now writes, is like what ſhe writ on thoſe Papers, and ſo confirms her Evidence.

Mr. *Kettlebey.* I ask you whether Sir *John Meers*'s Man *Thomas* ever ſaw thoſe Bundles opened?

Mrs. *Maſon.* No; he never was up in my Room; there was no ſuch Familiarity between us.

Mr. *Kettlebey.* Did you ever produce them ſeal'd up? Did you ever let *Thomas*, or *William*, or Sir *John Meers* himſelf, ſee either of theſe Bundles, as they were ſeal'd up?

Mrs. *Maſon.* No; they were in my Trunk. I always kept them in my Trunk. Perhaps as I opened my Trunk, they might ſee them lie in my Trunk. Vol. vi. p. 274.

L. C. Juſtice. When theſe Bundles were ſeiz'd, had they Mr. *Layer*'s Seal upon them?

Mrs. *Maſon.* Yes; the Seal of Mr. *Layer* was upon them.

L. C. Juſtice. What ſays the Meſſenger?

Meſſenger. There were three Seals upon one, and ſome Seals upon the other.

L. C. Juſtice. What is Mr. *Layer*'s Seal?

Mrs. *Maſon.* Something of a Head, with a Ruff about it.

L. C. Juſtice. Look upon the Head: Is that the Seal of Mr. *Layer*?

Mrs. *Maſon.* Yes; upon my Oath it is.

L. C. Juſtice. Was that Seal upon them when the Meſſenger ſeiz'd them?

Meſſenger. Yes; it was.

Mr. *Hungerford.* What Trade or Buſineſs do you follow? what is your Occupation?

Mrs. *Maſon.* What is that to you? I have no Trade.

M. *Hungerford.* Have you not a Promiſe of Reward for the Service you do here, in giving this Evidence?

Mrs. *Maſon.* No; I have not.

Priſoner. Nor you have receiv'd none?

Mrs. *Maſon.* No; you are an unjuſt Man.

L. C. Juſtice. Why don't you ask her, whether ſhe is to ſwear for Hire? Is that a proper Queſtion?

Att.

Att. Gen. Do you know what Names the Priſoner at the Bar has gone by?

Mrs. *Maſon.* He once gave me Orders, that if any Letter came directed in the Name of *Fountaine*, I ſhould take it in: Accordingly in two or three Days Time there came a Letter, directed to Mr. *Fountaine*, and I took it in; and when he came, I gave it him, and he opened it, and read it.

Priſoner. How can you tell how that Letter was directed, ſince you ſay you cannot read?

Mrs. *Maſon.* Mrs. *Cook* read the Superſcription. It was brought by a Porter; he told me, he came from the Ditch-Side, and asked me if Mr. *Fountaine* lodged there.

[*Mr.* Doyley *ſworn.*]

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Att. Gen. How long have you known Mr. *Layer*?

Doyley. About Seventeen or Eighteen Years. He was my Clerk.

Att. Gen. Look upon that Paper. Do you take it to be his Hand? [*Shewing the Scheme.*]

Doyley. If you ask me as to my Belief, I believe it is.

Att. Gen. Have you ſeen him write ſince he left your Service?

Doyley. I have had ſeveral Letters from him ſince he was my Clerk.

Priſoner. Have you ſeen me write any Thing ſince I was your Clerk, that is theſe fourteen Years, unleſs it was my Name?

Doyley, I can't particularly recollect, whether I have, or no.

L. C. Juſtice. How long is it ſince you receiv'd any Letters from him?

Doyley. About five Years ago he was my Client, and wrote to me about Buſineſs.

L. C. Juſtice. Did he pay you for that Buſineſs?

Doyley. Yes; very honourably.

Priſoner. Have you compared that Paper you ſay you believe to be my Hand with thoſe Letters?

Doyley. Yes; I have.

Priſoner. Is that what you found your Belief upon?

Doyley.

Doyley. That is what I chiefly found my Belief upon.

Priſoner. I wiſh you had brought thoſe Letters into Court.

Doyley. If you had deſired it, I would have brought them.

Priſoner. I deſired it! I little thought to have ſeen you here on ſuch an Occaſion.

Sol. Gen. I think, you ſay you have ſeen him write ſeveral Times.

Doyley. I do not remember I have ſeen him write theſe fourteen Years. He was my Clerk but two Years: He had been Clerk with Mr. —— before.

Sol. Gen. Then he had been uſed to Buſineſs before he came to you, and had formed his Hand.

L. C. Juſtice. Was the Character of thoſe Letters that you received five Years ago agreeable to the Characters that he writ when he was your Clerk?

Doyley. Yes, my Lord.

L. C. Juſtice. Then I ask you upon the whole Matter, whether you believe it to be his Hand-Writing?

Doyley. Yes; I do believe it to be his Hand.

Priſoner. Since my unhappy Circumſtances, have you had no Promiſe of being reſtored to your Place again? or the Promiſe of ſome other Office or Place?

Doyley. No; I never, to my Knowledge, have ſeen one Man that had the Power to put me in my Place again; nor ever converſed with any one great Man upon that, or any ſuch Affair.

[*Mr.* Delafaye, *Clerk of the Council, ſworn.*]

Serj. *Pengelly.* Sir, was that Paper [*the Scheme*] ſhewn the Priſoner at the Bar? Vol. vi. p. 276.

Mr. *Delafaye.* When he was before the Lords of the Council, I was not near enough to ſee what was upon the Table. But upon a Queſtion that was asked him, relating to ſome Arms, if he knew where any Arms were lodged in ſuch a Place? he ſaid, No: Upon which one of the Lords of the Council held up a Paper; it might be this, for ought I know, and ſaid, Here is your own Pa-

per, your own Hand-Writing; which ſays, *Arms that are there lodged*; ſays he, *I ſhould have wrote Arms that ſhould be there lodged.*

L. C. Juſtice. Whether is that the Paper, or no? and did he own that Paper that was then ſhewn to be his?

Mr. *Delafaye.* The Queſtion was not ask'd, *Is this your Paper and your Hand-Writing?* But it was ſhewn to him as ſuch; and he ſaid, *I ſhould have wrote, Arms that ſhould be there lodged.*

[*Mr.* Stanyan, *another Clerk of the Council, ſworn.*]

Mr. *Stanyan.* Upon the Queſtion that was ask'd him about the Arms, this Paper was ſhewn him. I think this is the Paper: I was nearer to the Table than Mr. *Delafaye*, and did obſerve this Paper to lie upon the Table before the Lords, and do take this to be the individual Paper that was ſhewn him; and the Queſton asked him at that Time, was, *what he knew of any Arms that were lodg'd in* Weſtminſter? He ſaid, *he knew of none:* Then this Paper was ſhewn him, and a Queſtion asked him: Here the Arms are ſaid to be lodged in this Scheme of your Hand-Writing, how came you to write ſo, if there be no Arms lodged? Mr. *Layer* ſaid, it was a Miſtake. It was not intended Arms that are there lodged, but Arms that ſhould be there lodged.

Mr. *Kettlebey.* Was the Queſtion asked, Whether that Paper was his Hand-Writing, or no?

Mr. *Stanyan.* No; I believe not. He did not expreſly own it to be his Hand-Writing; but it was taken for granted, it was ſo; and he made no Offer to deny it.

Priſoner. When I was asked why I did ſay *Arms that are lodged: Why*, ſays I, my Lords, *I know of no Arms. If that was my Paper, and I had wrote it, I ſhould have wrote, Arms that ſhould be lodged.*

Att. Gen. We pray the Papers may be read.

Objection that Similitude of Hands is no Evidence.

Mr. *Hungerford.* My Lord, we hope theſe Papers ſhall not be read; for the Evidence for the King hath not brought them home to the Priſoner. There is no legal Proof that the Papers are of his Hand-Writing; and conſequently he cannot be affected by any Thing that is in them. As to what is

is ſaid of the Likeneſs of Hands, that, we hope, is no Evidence at all. The firſt Witneſs, Mr. *Doyley*, ſaid it was like his Hand; but he gives that Opinion of his on the Knowledge he had of the Priſoner's Hand fourteen Years ago, and by ſome Letters he received from him about five Years ſince: Mens Hands may vary even in five, much more in fourteen Years. In my Lady *Carr*'s Caſe, Likeneſs of Hands was not allowed to be Evidence; and yet that was not a Capital Caſe, it was a Miſdemeanor only, it was Perjury: But there is an Authority beyond all that, we have the Act of Parliament for the Reverſal of the Attainder of Colonel *Sidney*, who had been convicted upon Evidence given of the Similitude of Hands, and that a much ſtronger Proof than appears here; for *Cook* and *Cary*, two famous Goldſmiths, ſwore they believed the treaſonable Libel laid to Colonel *Sidney* to be wrote by him; and aſſigned that for a Reaſon of their Belief, that they had ſeveral Bills from him of the like Hand-Writing, which they conſtantly paid; nay, one of the Witneſſes ſwore (as I remember) that he ſaw the Colonel write a Receipt. Other Caſes might be quoted; but we depend upon the Authority of the Lady *Carr*'s Caſe, and the Act for reverſing the Attainder of Colonel *Sidney*; for in that Act the Reaſon aſſigned for reverſing the Attainder, is, That the Conviction and Attainder was founded upon a Similitude of Hands. In Conſequence of this Act, Similitude of Hands is never to be given in Evidence in a Criminal Caſe; therefore, we hope, that this Paper is not ſo proved, as to be read in any Court. It is not proved to be his Hand by any that ever ſaw him write; neither hath any body heard him own it to be his.

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Mr. *Kettlebey*. My Lord, I hope for the ſake of Evidence, the ſacred and eternal Rule of Evidence, that Similitude of Hands ſhall not go for Proof, where a Perſon is charg'd with a capital Offence. Mr. *Doyley* ſays, That he chiefly founded his Opinion (that it was the Priſoner's Hand-Writing) on comparing it with the Letters he receiv'd from him: And if Compariſon of Hands was to be Evidence, ſurely this would not do, unleſs he produc'd thoſe Papers, on which he owns he founded his Opinion. Shall a Man be believ'd out of his

Life, becauſe the Witneſs ſaw him write fifteen Years ago, and receiv'd Letters from him five Years ago? Is any Thing more changeable than a Man's Hand-Writing? Can any Gentleman take upon him to ſay what is, or is not his Hand-Writing after ſo great a Length of Time; and would not the different Subjects, the one a common Letter of Buſineſs, and the other a treaſonable Scheme, make a ſenſible Variation, even in a Man's uſual Character?

The two next Witneſſes, Mr. *Delafaye* and Mr. *Stanyan*, are Gentlemen of Honour, and would not ſtrain a Point upon any Account whatſoever. Mr. *Delafaye* does not know whether that Paper was upon the Table when the Priſoner was examin'd; and Mr. *Stanyan* takes the Paper now produc'd, to be the ſame Paper that was upon the Table before the Lords of the Council, becauſe Mr. *Layer* ſaid, *I ſhould have wrote Arms that ſhould be lodg'd*; but Mr. *Stanyan* owns, he never was ask'd the Queſtion, whether it was his Hand-Writing, or no. The natural Senſe of the Priſoner's Words, as prov'd, is no more than this: *If I had writ it, I ſhould rather have wrote Arms that ſhould be lodg'd.* Your Lordſhips are now to lay down a perpetual Rule of Evidence. If Compariſon of Hands in this Caſe be allow'd as Evidence, the ſame Rule muſt for ever hold in all parallel Caſes; and God knows what may be the Conſequence of ſuch a Reſolution, or who may be affected by it.

Serj. *Pengelly*. We hope, notwithſtanding what hath been objected, we are proper to have this Paper read: Though they have mention'd ſome Caſes to maintain their Objection, yet the later Authorities, and the conſtant Courſe of Evidence, as we think, are directly with us. In the Caſe of my Lord *Preſton*, the Indictment was for his adhering to the King's Enemies; and amongſt other Overt-Acts alledg'd, one was his carrying ſeveral Papers of Inſtructions, to inform the *French* King how to attack the Kingdom. Mr. *Warre*, who had been an Under-Secretary to my Lord *Preſton*, ſwore, he believ'd ſome of theſe Papers to be like my Lord *Preſton*'s Hand; and they were read by the Opinion of the whole Court. Here ſuppoſing no Uſe is made of the Evidence of Mr. *Doyley*, when this Paper was ſhewn to Mr.

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Layer

Layer before the Lords of the Council, and was mention'd as a Paper of his own Writing, and he is ask'd how he came to write *Arms that are ſaid there to be lodg'd*, his Anſwer is, *I ſhould have wrote Arms that ſhould be there lodg'd.* Doth not this amount to an Evidence of his confeſſing it to be his own writing?

Att. Gen. My Lord, I beg leave to obſerve firſt, that it hath been prov'd that this Paper was found among the Papers which the Priſoner deliver'd to Mrs. *Maſon* to be kept for him; and if that were all, this Paper muſt be read. The Lord *Preſton*'s Caſe is direct in Point, and ſo determin'd by ſix Judges, that Papers found in the Poſſeſſion of the Priſoner may be read without further Proof. But we inſiſt, that the Paper is legally and regularly prov'd to be his Writing, by the Evidence of Mr. *Doyley*, and his own Confeſſion. As to the Lady *Carr*'s Caſe, mention'd by his Counſel, ſhe was indicted for Perjury, ſuppoſed to be committed in an Anſwer, ſworn by her before a Maſter in *Chancery*. What is here ſaid about a Letter, does not appear to relate to the Caſe there; and if any Judge did lay down ſuch a Poſition as has been mention'd, the Meaning muſt be, that an Anſwer on Oath ſhall not be falſified by a Letter only under the Parties Hand. And as to Colonel *Sidney*'s Caſe, a Writing was found in his Study, being a general Treatiſe of Doctrines and Poſitions, very diſtaſteful to the Government, writ in Anſwer to a Book formerly publiſh'd. It was not a Scheme for raiſing a Rebellion, or deſign'd for any Thing appear'd to go out of his own Cloſet, and for this he was indicted of High-Treaſon. It was generally thought extremely hard to make his having by him ſuch a general Tract, writ in Anſwer to a particular Book, and kept private in his Cloſet, an Overt-Act of Treaſon; no Wonder then that the Parliament reſented this Proceeding, and revers'd his Attainder. The Reaſons recited in the Act as Inducements for this Reverſal, are accumulative; and the Streſs is not laid only upon the Proof of this Paper: The Act recites, That Colonel *Sydney*, by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen for want of Freehold, and without ſufficient legal Evidence of any Treaſons committed by him, there

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being produc'd a Paper found in his Cloſet, ſuppoſed to be his Hand-Writing, which was not prov'd by any one Witneſs to be written by him; but the Jury were directed to believe it, by comparing it with other Writings of his. And beſides that Paper ſo produc'd, there was but one Witneſs to prove any Matter againſt him; and by a partial and unjuſt Conſtruction of the Statutes of Treaſons, was unjuſtly attainted; and then the Act reverſes the Attainder. Here the Priſoner's is not only prov'd by one who ſaw him write, but if the Queſtion propoſed to the Priſoner by the Lords of the Council, and his Anſwer are conſidered, it amounts to a plain Confeſſion of it; and therefore we inſiſt, we have given ſufficient Evidence for the Reading of this Paper.

The Priſoner's Objection over-rul'd.

L. C. Juſtice. It is prov'd that theſe Papers were in Mr. *Layer*'s Poſſeſſion, and deliver'd by him to Mrs. *Maſon*, ſeal'd up; and if no other Evidence had been given, the Papers ought to be read. Can any Thing in the World be an Authority more expreſs than that of my Lord *Preſton*, where all the Papers that were in his Cuſtody were read, without any Offer of Proof that they were his Hand? But this goes further, and is prov'd to be a Paper written with his own Hand; and this is confirm'd by his own Confeſſion. But if it had been an independent Evidence, it is an Evidence ſufficient to have this Paper read.

In the Lady *Carr*'s Caſe, when ſhe had ſworn the Letter was not her Hand, in an Anſwer in *Chancery*, they come to prove it by a Witneſs, that ſays, he believes it to be her Hand. Upon this the Court determines, that this Evidence could be of no Conſequence, to falſify any Matter which ſhe had declaclared upon her Oath; and this was certainly right, but not at all parallel to the Caſe in Queſtion. Here, if the Proof of his Hand had been out of the Caſe, it muſt be read as a Paper in his Cuſtody, and taken from one with whom he had depoſited it beyond Contradiction. In the Caſe of my Lord *Preſton*, and in a thouſand Caſes it hath been ſo, and never was denied. Upon the Whole, never was any Thing clearer, than that this muſt be read as a Paper found in his Cuſtody, that hath in the uſual Manner and Method the Proof of being his Hand-Writing.

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The

[*The Scheme was read.*]

Au défaut de la force il faut employer la ruſe.

The Scheme for the Inſurrection read.

I. Let the General, and only one Officer of Note in the Camp agree upon a Day of Execution.

II. Let the Officer that Day put himſelf on the *Tower* Guard.

III. As there are eight Serjeants, *viz.* three of the firſt Regiment of Foot Guards, three of the ſecond, and two of the third, early in the Morn, let the Officer ſee a ſingle Perſon, namely, *George Wilſon*, who manages theſe Serjeants, and give him Directions to bring them all to a convenient Place at Four that Afternoon.

IV. Then the Officer muſt give each Serjeant Money ſufficient for the Purpoſe, and direct 'em, that each Serjeant order twenty five Men (making together two hundred, which they have ready,) to go ſingly out of the Camp, and meet together at ——— *Church-Yard*, exactly half an Hour paſt Eight in the Evening; when and where another Officer that they know muſt meet 'em, and take the Command, give 'em Muskets ready loaded, and march with them in a Body to the *Tower* Gate at Nine that Night exactly.

V. Our Friend, the Officer within, muſt preciſely at the Hour of Nine be on the Guard at the *Tower* Gate, and ſeeing this Body of Men appear, order the Garriſon to let them in as a Recruit ſent to the *Tower* Guard.

VI. As ſoon as ever they have enter'd, to ſeize the Arms at the *Tower* Gate, ſhut the Gate up, and ſecure every one in the *Tower* that the Officer on Guard gives them Orders to ſecure; but not to ſhed any Blood.

VII. The *Tower* being thus ſeiz'd, to leave only a ſmall Guard there under that Officer who lets them in, and then with all thoſe that join you, march directly to the *Exchange*, where the great Doors muſt be ready opened, and the General there in Perſon.

VIII. At the exact Hour of Nine, that the *Tower* ſhall be thus ſeiz'd, the Perſons of ſome great Men

being produc'd a Paper found in his Cloſet, ſuppoſed to be his Hand-Writing, which was not prov'd by any one Witneſs to be written by him; but the Jury were directed to believe it, by comparing it with other Writings of his. And beſides that Paper ſo produc'd, there was but one Witneſs to prove any Matter againſt him; and by a partial and unjuſt Conſtruction of the Statutes of Treaſons, was unjuſtly attainted; and then the Act reverſes the Attainder. Here the Priſoner's is not only prov'd by one who ſaw him write, but if the Queſtion propoſed to the Priſoner by the Lords of the Council, and his Anſwer are conſidered, it amounts to a plain Confeſſion of it; and therefore we inſiſt, we have given ſufficient Evidence for the Reading of this Paper.

The Priſoner's Objection overrul'd.

L. C. Juſtice. It is prov'd that theſe Papers were in Mr. *Layer*'s Poſſeſſion, and deliver'd by him to Mrs. *Maſon*, ſeal'd up; and if no other Evidence had been given, the Papers ought to be read. Can any Thing in the World be an Authority more expreſs than that of my Lord *Preſton*, where all the Papers that were in his Cuſtody were read, without any Offer of Proof that they were his Hand? But this goes further, and is prov'd to be a Paper written with his own Hand; and this is confirm'd by his own Confeſſion. But if it had been an independent Evidence, it is an Evidence ſufficient to have this Paper read.

In the Lady *Carr*'s Caſe, when ſhe had ſworn the Letter was not her Hand, in an Anſwer in *Chancery*, they come to prove it by a Witneſs, that ſays, he believes it to be her Hand. Upon this the Court determines, that this Evidence could be of no Conſequence, to falſify any Matter which ſhe had declaclared upon her Oath; and this was certainly right, but not at all parallel to the Caſe in Queſtion. Here, if the Proof of his Hand had been out of the Caſe, it muſt be read as a Paper in his Cuſtody, and taken from one with whom he had depoſited it beyond Contradiction. In the Caſe of my Lord *Preſton*, and in a thouſand Caſes it hath been ſo, and never was denied. Upon the Whole, never was any Thing clearer, than that this muſt be read as a Paper found in his Cuſtody, that hath in the uſual Manner and Method the Proof of being his Hand-Writing.

Vol. vi. p. 280.

The

[*The Scheme was read.*]

Au défaut de la force il faut employer la ruſe.

I. Let the General, and only one Officer of Note in the Camp agree upon a Day of Execution. The Scheme for the Inſurrection read.

II. Let the Officer that Day put himſelf on the *Tower* Guard.

III. As there are eight Serjeants, *viz.* three of the firſt Regiment of Foot Guards, three of the ſecond, and two of the third, early in the Morn, let the Officer ſee a ſingle Perſon, namely, *George Wilſon*, who manages theſe Serjeants, and give him Directions to bring them all to a convenient Place at Four that Afternoon.

IV. Then the Officer muſt give each Serjeant Money ſufficient for the Purpoſe, and direct 'em, that each Serjeant order twenty five Men (making together two hundred, which they have ready,) to go ſingly out of the Camp, and meet together at ——— *Church-Yard*, exactly half an Hour paſt Eight in the Evening; when and where another Officer that they know muſt meet 'em, and take the Command, give 'em Muskets ready loaded, and march with them in a Body to the *Tower* Gate at Nine that Night exactly.

V. Our Friend, the Officer within, muſt preciſely at the Hour of Nine be on the Guard at the *Tower* Gate, and ſeeing this Body of Men appear, order the Garriſon to let them in as a Recruit ſent to the *Tower* Guard.

VI. As ſoon as ever they have enter'd, to ſeize the Arms at the *Tower* Gate, ſhut the Gate up, and ſecure every one in the *Tower* that the Officer on Guard gives them Orders to ſecure; but not to ſhed any Blood.

VII. The *Tower* being thus ſeiz'd, to leave only a ſmall Guard there under that Officer who lets them in, and then with all thoſe that join you, march directly to the *Exchange*, where the great Doors muſt be ready opened, and the General there in Perſon.

VIII. At the exact Hour of Nine, that the *Tower* ſhall be thus ſeiz'd, the Perſons of ſome great Men

to be arreſted at their Houſes, brought directly into the City, and delivered to the General.

IX. That upon our meeting at the Exchange the annexed Proclamation to be ſpread about, the Gates of the City to be ſhut up, and Pieces of Cannon brought down againſt them; but every Man that deſires to enter the Gates before any regular Force appear, to be admitted to come in; and after the General has appointed a Guard at each Gate and Inlets of the City, with proper Officers to command there, let him march back to *Tower-Hill* for a Place of General Rendezvous, under the Cannon of the *Tower*, and order the Lord Mayor a good Guard to watch over the Bank; but firſt take Money from thence to the *Tower*, in order to pay the Men.

Vol. vi. p. 281. X. The Artillery in the Camp to be ſeized.

XI. The King to be ſecured and ſent to the *Tower*.

XII. Horſe-Officers their Friends in the Camp to march into the City.

XIII. Four Half-Pay Captains to command each a Party; one in *Southwark*, the ſecond in the *Privy-Garden*, the third in *St. James's-Park*, the fourth in *Tuttle Fields*.

XIX. A Captain to lead the Watermen.

XX. Orders to be ſent to their Adherents in the Country to riſe.

XXI. An Officer to go to *Richmond* to ſeize Prince *Pretty-Man*.

Att. Gen. My Lord, we apprehend that this confirms what both the Witneſſes have ſworn.

Serj. *Pengelly*. We ſhall now produce ſome Receipts ſubſcrib'd, *James R.* that were likewiſe among thoſe Papers.

[*Clerk of the Court reads one of them.*]

Vol. vi. p. 282. *I Acknowledge to have received from the Sum of which Sum I promiſe to repay with an Intereſt for it, at the Rate of* per Ann.

James R.

L. C. Juſtice. Theſe are not read as proved to be his Hand; but as Papers found on him.

Clerk

Clerk of the Court. Here are ten of them that are the ſame.

Serj. *Pengelly.* Mr. *Stanyan*, Do you remember whether any Queſtions were asked him with Relation to theſe Receipts?

Mr. *Stanyan.* Upon the Lords asking Mr. *Layer* the Meaning of theſe Receipts ſign'd by the Pretender, and what Uſe he made of them, he ſaid, That during the Time he was at *Rome*, he had ſettled a Correſpondence with Sir *William Ellis*; and ſometime afterwards he writ to Sir *William Ellis*, according to the Directions he gave him; and he told him, if he could ſend any Receipts, ſign'd by his Majeſty, or the King, as he call'd him, he thought Money might be raiſed upon them for carrying on the Cauſe.

Mr. *Kettlebey.* You ſay he owned he had them from Sir *William Ellis*, having ſettled a Correſpondence with him, that Money might be raiſed by theſe to carry on his Cauſe. He told you he had Buſineſs to do for Sir *William Ellis*.

Mr. *Stanyan.* No; I know nothing of Sir *William Ellis*'s Buſineſs; but that he had appointed to correſpond with Sir *William Ellis*, and gave him Directions how to direct to him; and he acknowledged to have received a Letter or Letters from Sir *William Ellis*, in the Name of *Jones*; and that he writ him an Anſwer to them.

Mr. *Kettlebey.* Are you ſure as to thoſe Words? or only to the Purport of them?

Mr. *Stanyan.* I think they are very near the Words; but I am ſure they are the Purport of them.

Mr. *Kettlebey.* Was it reduced into Writing?

Mr. *Stanyan.* Yes; it was. The Lords ſent me to aſſiſt Mr. *Delafaye* upon Mr. *Layer*'s being examined. Mr. *Delafaye* took the Heads of the Queſtions propounded, and I ſat near the Table, looked over Mr. *Delafaye*, attended to the Queſtions and Anſwers; ſo that we could ſet one another right when we came to conſider them. Vol. vi. p. 283.

Mr. *Kettlebey.* Do you believe Mr. *Layer* knew you was taking his Confeſſion at that Time?

Mr. *Stanyan.* I think it can't be otherwiſe. The Lords ſpoke thus: *Pray take Notice*; and then, *Take down ſuch a Thing, and ſuch a Thing*; and I be-

I believe Mr. *Layer* heard them ſay, *Take down that; and take down that.*

Mr. *Hungerford.* Was you in the Room when Mr. *Layer* came in firſt?

Mr. *Stanyan.* I was; I called in Mr. *Layer* by the Lords Order.

Mr. *Hungerford.* Was it ever read to him?

Mr. *Stanyan.* No.

Mr. *Hungerford.* Was it drawn up in Form, ſo that you might call it an Examination?

Mr. *Stanyan.* It was the Minutes of an Examination to be drawn out in Form; but the Lords not finding Mr. *Layer* ſo candid and ingenious as they thought he would have been, did not ask him to ſign it, and we only make Uſe of it to refreſh our Memories.

Sol. Gen. When the Lords directed Mr. *Delafaye* and you to write this or that particular Thing, was the Priſoner ſo near that in your Apprehenſion he might hear their Lordſhips give ſuch Directions?

Mr. *Stanyan.* Yes; he was.

Mr. *Hungerford.* Sure they are not contending, that any Confeſſion ſhall affect a Man unleſs it was read to him, and it ought to be ſigned by him: The Man is no way anſwerable for any Thing taken in Writing without his Conſent or Privity in a Criminal Caſe. It is called Minutes of an Examination, which they might enlarge as they pleaſe; therefore we humbly ſubmit it to your Lordſhip, whether it ought to be offered in Evidence at all as a Confeſſion?

Mr. *Kettlebey.* A Confeſſion to a Juſtice of Peace in Caſes of Felony, unleſs read to the Party, and ſign'd by him, muſt not be given in Evidence.

L. C. Juſtice. Your Objections would prevail if they were going to read a Confeſſion as Evidence which was neither read to him, nor ſign'd by him: But if there is no Examination reduced to Writing, and ſigned by the Party, the Witneſs is at Liberty to give an Account of what was ſaid, and he may look on his Notes to refreſh his Memory, though this is not ſo great an Evidence, of ſo great Weight as an Examination taken and ſigned by the Party, there being ſome Room left to ſuppoſe the Evidence may be miſtaken: But this is practiſed every Day at the *Old-Baily*, if a Perſon confeſſeth, and it be not in Writing, they prove his Confeſſion *Viva Voce.*

Mr.

Mr. *Delafaye.*

Serj. *Cheſhire.* Pray give an Account what Mr. *Layer* declared before the Lords of the Council concerning theſe Receipts.

Mr. *Delafaye.* He told the Lords, That he did write to Sir *William Ellis*, that he would ſend over ſome Blank Receipts under the King's Hand, that might be made uſe of for the carrying on his Cauſe; that he did receive ſuch Receipts, and his Intention was to have tried his Friends, and to have raiſed Money on thoſe Receipts; and that they had a Precedent for it a little before the Reſtauration of King *Charles* II. a Method of this Kind had been uſed.

Att. Gen. We ſhall proceed to read the Letters that paſſed between Sir *William Ellis* and Mr. *Layer*, and lay before you the Cyphers made uſe of to explain ſeveral Cant Words and Expreſſions. Vol. vi. p. 284.

[*Clerk of the Court reads.*]

This Letter is ſign'd *Euſtace Jones.*

Dear Sir,

I Received with a great deal of Pleaſure and Satisfaction a Letter of the 24*th of* November, *from my worthy Friend with an Account of his ſafe Arrival, of which I was in ſome Doubt before, and in no ſmall Pain on that Account. I eaſily conceive he muſt have had a great deal of Buſineſs on his Return, as well of his Uncles, as of his own; and therefore don't think much that I heard no ſooner from him, believing he was much better employ'd; and that Buſineſs is to be preferred before Compliment.* —— *I was entirely of Opinion as to the Method of carrying on the* Manufactory: *The procuring of good* Workmen *is the firſt Step to be made; and if he can get ſuch, the reſt will be eaſy; and particularly if he could gain ſome of the ableſt of Mrs.* Barbara Smith's. *I know it would be very agreeable to all concerned; and particularly to Mr.* Atkins, *to whom he ſpoke of Writing, and which I am ſatisfied will be very acceptable: And if he thinks fit to encloſe it to me, I ſhall convey it ſafely to his Hands, who I find was very glad to hear of him, counts very much upon his Friendſhip, and hopes for the Continuance*

tinuance of it. I made his Compliments to Mr. Timothy Watſon's *Wife, who took them very kindly, and returns hers, with her moſt humble Service : She and her Charge are very well, God be praiſed, as are alſo all Friends here. —— He having read over ſeveral Times the Paper I ſhew'd him, and having a good Memory, I don't think it neceſſary to ſend a Copy of it. I am, with great Eſteem and Reſpect, ever moſt entirely,*

Dear Sir,

Your moſt Affectionate moſt Humble,

And moſt Obedient Servant,

Jan. 30.

EUSTACE JONES.

For James Fountaine *Eſq*; *To be left at* Howel's Coffee-Houſe, *in* Great Wild-Street, London.

Att. Gen. Your Lordſhip is pleaſed to remember Mr. *Stanyan* ſaid, That Sir *William Ellis* was to write by the Name of *Jones* ; and in the Cypher Sir *William Ellis* is called *Jones*. You will pleaſe to obſerve alſo the Expreſſions in this Letter, *The procuring good Workmen*, and in the Cypher *Soldiers* are meant by *Workmen : Manufactory* is not in the Cypher; but I don't know for what *Manufactory* they wanted Soldiers unleſs to raiſe a Rebellion. *The ableſt of Mrs.* Barbara Smith's *:* Look for Army in the Cypher, and you will find that is ſignified by *Barbara*; and Mr. *Atkins* in the Cypher is the Pretender. *Compliments to Mr.* Timothy Watſon's *Wife:* Look on the Cyphers, and *Timothy* ſtands for *Hughs*, whoſe Wife is Nurſe to the Pretender's Child. This Letter is directed for *James Fountaine* Eſq; and Mrs. *Maſon* ſaid the Priſoner went by the Name of *Fountaine*. N°. 10. are fictitious Names, and the Key to them : Read it.

[*Clerk of the Court reads.*]

Digby —— *Dillon*,
Orery —— *Burford*,
Regent —— *Steel*,

Tories —— *Tanners*,
Whigs —— *Waggs*,
Rogers —— *Plunket*,

Att.

Att. Gen. Read Letter, N°. 40.

[*Clerk of Court reads.*]

Sign'd *N. C.* dated *July* 11. 1722.

Dear Sir,

I Received with all poſſible Satisfaction your moſt affectionate Letter of May 8. *with its incloſed, which was preſently deliver'd to Mr.* St. John, *who took it extream kindly; but could not well underſtand what relates to Mr.* Burford: *He hopes your Anſwer to what I writ in the Beginning of laſt Month, may ſoon clear that. You will have ſeen, by what I then told you, that the former came ſafe to his Hands, and the Reaſon of your not having had a diſtinct Anſwer to it. He had the Stockings you ſent for him; and returns you many Thanks for them, as alſo for all other Marks of your Affection and Concern for him and his, and will be ready to ſhew his Senſe thereof on all Occaſions. I am in earneſt Expectation of hearing ſoon again from you, and am with all poſſible Affection and Eſteem.*

Dear Sir,

Your moſt Faithful and

Moſt Humble Servant,

N. C.

For James Fountaine *Eſq; To be left at* Howel's Coffee-Houſe, *in* Great-Wild-Street, London.

L. C. Juſtice. Who is that *N. C*?

Att. Gen. We do not know. Mr. *St. John* in the Cypher ſignifies the Pretender. Vol. vi. p. 285.

Mr. *Hungerford.* Look into the Paper. Pray what do Stockings ſtand for?

Sol. Gen. Read the Letter N° 41.

Clerk of the Court. This is dated the 27th of *May.* It is ſign'd by no Body, nor directed to any Body, the cover is off.

Dear Sir,

I Received, with a great deal of Pleaſure, the Favour of your moſt obliging Letter of March 22. *with*

an

an inclos'd done for our Friend, who was very glad to hear from you, and is very ſenſible of, and takes very kindly the Care you take of his little Concerns there; but ſaith, he doth not ſufficiently underſtand the State you ſent, ſo as to be able to make a particular Anſwer, till you ſhall further explain it; there being ſome Tenants mention'd by you, whoſe Names he does not find in the Rental, as Burford, Steel, Digby, *the little Soldier, and* Simmons, *the latter he believes ſhould be* Simmes: *He is of the* North, *a grey-hair'd antient Man, whom he very well remembers, and has a particular Eſteem and Value for, as a very good Tenant, and a very honeſt Man.——All Friends here are in perfect Health, God be thanked, and remember themſelves kindly to you, and I am moſt entirely*

Yours, &c.

Sol. Gen. You will find that *Rental* ſtands as a fictitious Name for the Cypher itſelf, and *Simmons* in the large Cypher for the Lord *North and Grey.*

L. C. Juſtice. What Uſe do you make of theſe Letters?

Sol. Gen. The Uſe we make of them is, to ſhew that Mr. *Layer*, who took on him the ſham Name of *Fountaine*, by which ſome of theſe Letters are addreſs'd, had a Correſpondence with the Friends of the Pretender at *Rome*; that this Correſpondence related to a Conſpiracy, which was form'd and carrying on here; and it appears, they took upon them to mention ſeveral Perſons of Diſtinction under a kind of Jargon.

Att. Gen. They ſhew that the Agents of the Pretender at *Rome*, had laid deſigns to procure Soldiers, and thoſe, if poſſible, out of his Majeſty's Troops; which falls in with the Evidence we have given, of the Priſoner's Endeavours to get Soldiers and Serjeants out of the Army.

Serj. *Cheſhire.* It may not be improper to lay before you, the Liſts of ſeveral Perſons names that are in the Army.

Clerk of the Court reads. A Liſt of Officers Names, with Marks and Numbers to ſome of them.

Att. Gen. We have hinted already, that there are the Names of ſeveral Perſons of very great Honour and Loyalty to his Majeſty in ſome of the Liſts; but this is to ſhew, that the Priſoner was conſulting

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ing how he might get an Account of the Number of the Forces; as how many Colonels, how many Captains, and how many Soldiers there were in the Guards, and other Troops of his Majeſty.

[*Here ſeveral Liſts were read of the Officers of the Guards; of the Number of Men and Horſes under their Command; of the great Officers of the* Tower, &c.]

Serj. *Pengelly.* We deſire to ask Mr. *Delafaye* and Mr. *Stanyan*, Whether, at the Examination of Mr. *Layer*, any Thing was ſaid of Mr. *Layer*'s being at *Rome*?

Mr. *Hungerford.* Mr. *Layer*'s being at *Rome*, and correſponding with the Pretender (if he did ſo) is made Treaſon by another Act of Parliament, and not by this on which he is indicted; and therefore Evidence of his being at *Rome*, and correſponding with the Pretender, cannot be offer'd as an Evidence of High Treaſon upon this Indictment. Vol. vi. p. 186.

Serj. *Pengelly.* It is only to ſhew the Probability of receiving thoſe Receipts.

Sol. Gen. Notwithſtanding the Objection which is made, that we are attempting to give Evidence of another kind of Treaſon not alledg'd in the Indictment, yet we inſiſt upon it, that it is proper here as circumſtantial Evidence of the Treaſon which is alledg'd. It has been held ever ſince the Statute of 7 *Will.* III. That Acts of High Treaſon, not laid in the Indictment, may be given in Evidence, if they conduce to the Proof of ſome Overt-Act, which is there laid.

Mr. *Hungerford.* They may as well offer Evidence againſt him for counterfeiting the Great-Seal, or Clipping and Coining, for the ſake of Evidence; and we humbly hope, they ſhall not be permitted to give Evidence of Facts which are entirely foreign to the preſent Accuſation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the Priſoner hath been at *Rome*: Let them conſent to have him acquitted upon this Indictment, and then let him be proſecuted on the Act for Correſponding with the Pretender, and ſee what they will make of it. Vol. vi. p. 287.

L. C. Juſtice. Sure as this Evidence is offer'd, it is very proper. The Treaſons laid in this Indict-

ment

ment are, a Deſign to depoſe the King, and ſet the Pretender on the Throne, &c. and it is not proper to ſhew for this Purpoſe, That this Gentleman correſponded with *Rome*, was with the Pretender, and theſe Letters ſent from Sir *William Ellis* to him: Letters, according to his own Deſire, purporting Receipts for Money to be ſign'd by the Pretender, as a Foundation to oblige him to make Repayment; and after theſe Things have been offer'd, is it not proper to go as far as they can upon this Head, and ſhew how far he hath been engaged with the Pretender and his Accomplices?—— Don't trouble yourſelf, no Uſe ſhall be made of that to charge you with the Treaſon, made ſo by another Act of Parliament about Correſponding with the Pretender.

Mr. *Reeve*. Mr. *Stanyan*, Pray go on, and give an Account of what he confeſs'd, when examin'd before the Lords of the Council, about his being at *Rome*.

Mr. *Kettlebey*. Mr. *Stanyan* ſaid he had taken Minutes of his Examination: I had rather ſee the Minutes than truſt to his Memory. In the Trial of the two Bailiffs in this Court, the Subſtance of what the Deceaſed ſaid was reduc'd into Writing, and therefore the Parole Evidence, that was offer'd to be given, was rejected; and whether the Rule is not the ſame in greater Caſes? Therefore we hope he ſhall produce thoſe Notes, now he is going to give a further Account of his Examination.

Mr. *Hungerford*. I was Counſel in that Caſe: The Juſtice of Peace who had taken Mr. *Lutterel*'s Examination, did not appear, and that Examination could not be had: There was a Copy of it taken and produc'd, and proved in Court to be a true Copy, but your Lordſhip would not ſuffer that Copy to be read, or the Subject-Matter of it to be given in Evidence, unleſs the original Examination itſelf was produc'd.

L. C Juſtice. Mr. Attorney, Do you oppoſe producing the Minutes?

Vol. vi. p. 288. Serj. *Pengelly*. There may be a great many Things that are not material to the preſent Caſe: Why ſhould they have all theſe Minutes read? It is not for the ſake of the Priſoner, but for the ſake of ſome other People, who may be liſtning here.—— In the Caſe of *Lutterel*, there was a compleat Examination

mination taken by a Juſtice of Peace: In this Caſe, there is no Examination compleated and drawn up; it is nothing but an Oral Confeſſion, and amounts to no more.

Att. Gen. Their deſiring to have theſe Minutes read, is not ſo much for the ſake of their Client, as for the ſake of other People.

L. C. Juſtice. Without Mr. Attorney's Conſent, we are of Opinion they cannot be read: He intimates that it might be a Diſſervice to the King to have theſe Things diſclos'd; you cannot read the Minutes taken againſt the King, becauſe theſe Matters are not ripe yet, nor to be diſcovered to the World.

Mr. *Hungerford.* Something dropp'd as if we did inſiſt upon this Matter for the ſake of others: They are miſtaken; we contemn ſuch an Inſinuation: We are of Counſel for this Man ſingly.

Serj. *Pengelly.* Mr. *Stanyan*, pleaſe to recollect what was ſaid by Mr. *Layer* relating to the Declaration: Was any Queſtions ask'd relating to the Perſons who had ſeen it?

Mr. *Stanyan.* He ſaid, the only Perſons that had ſeen it, were one *Wilſon*, *William Jeffereys* a Non-juring Parſon, and one *Lynch*.

Serj. *Pengelly.* Where did he mention to have ſhew'd it *Lynch*?

Mr. *Stanyan.* On his Way to my Lord *North and Grey*'s, at the *Green-Man* at *Epping*.

Serj. *Pengelly.* Was there any Thing more ſaid by *Layer*, relating to that Journey to *Epping*.

Mr. *Stanyan.* He ſaid, he went to my Lord *North and Grey*'s, and dined at the *Green-Man* as he went; then he carried Mr. *Lynch* to my Lord *North and Grey*'s, and recommended him to my Lord *North and Grey* as a proper Perſon to be employ'd; I think it was employ'd in an Inſurrection, or in any Thing elſe that his Lordſhip ſhould command him.

Mr. *Kettlebey.* If he is not certain, I deſire he may produce his Minutes, as he gives his Evidence *viva voce*, to refreſh his Memory.

Att. Gen. We ſubmit to it.

L. C. Juſtice. It is always ſo.

Mr. *Stanyan.* He recommended him as a proper Perſon to be employed in an Inſurrection; and that *Lynch* having told *Layer* before that he would

ſeize the Earl of *Cadogan*, that *Layer* did mention him to my Lord *North and Grey* as a proper Perſon for ſuch an Attempt.

Mr. *Kettlebey.* The firſt Time you ſaid in an Inſurrection, as you remember'd or thought; how came you to be more certain on the ſecond Repetition of your Evidence than at the firſt?

Mr. *Stanyan.* I have recollected the Words; and Mr. *Layer* uſed thoſe Words.

Mr. *Hungerford.* Did you give your Evidence, that you was certain he ſaid that he had recommended *Lynch* as a proper Perſon to be concerned in an Inſurrection in general, or only as a proper Perſon to ſeize my Lord *Cadogan*, or both? how did he expreſs himſelf?

Mr. *Stanyan.* I will tell you how the Words were: *Lynch* having told him he would ſeize my Lord *Cadogan*, *Layer* recommends *Lynch* to my Lord *North and Grey* as a proper Perſon for ſuch an Attempt.

Mr. *Hungerford.* Then the Inſurrection was out of the Caſe; he was only recommended to my Lord *North and Grey* as a proper Perſon to ſeize my Lord *Cadogan.*

Vol. vi. p. 289. Mr. *Kettlebey.* I think you have repeated it three Times, and different each Time; now pleaſe to rectify your Memory, and let us have it ſo as it may be underſtood.

Mr. *Hungerford.* Pray give an Account once for all how that Matter was.

Mr. *Stanyan.* I can give you no other Account.

Mr. *Ketilebey.* He hath varied every Time: I appeal to Mr. *Attorney*, I appeal to your Lordſhip; ſurely this ſerves to make our Objection ſo much the ſtronger, againſt allowing parole Evidence of a Confeſſion that was put in Writing.

Att. Gen. I can't imagine what they mean: Here is a Gentleman that gives an Account that the Priſoner confeſs'd that he recommended *Lynch* to my Lord *North and Grey* as a proper Perſon to be employed in the Inſurrection, and to ſeize my Lord *Cadogan*; where is the Variation in this?

Sol. Gen. Did Mr. *Layer* declare any Thing further?

Mr. *Stanyan.* He ſaid my Lord *North and Grey* received him civilly; he ſupped there, and lay there that

that Night, and they dined there the next Day; and, either at Dinner, or afterwards, ſeveral Healths were drank, which were begun by my Lord *North and Grey*; that after Dinner there came in a Man they called a Citizen, they drank the Pretender's Health, his Wife, and the young Prince's.

Att. Gen. Mr. *Delafaye*, pray give an Account what Mr. *Layer* ſaid, when he was examin'd before the Lords of the Council, relating to his being at *Rome*.

Mr. *Delafaye*. Mr. *Layer* declared to the Lords of the Council, that he had been at *Rome*; that he had had two Conferences with the Pretender; that he acquainted him with the Diſaffection of the Nation, with Reſpect to the Loſſes that had been ſuſtained by the *South-Sea*. He ſaid in general, the Nation was well affected to him; and that he knew Perſons of Eſtate, not Quality, that were in his Intereſt. Then he propoſed to have Credentials or Tokens of the Pretender's Regard to him; which was not granted him. Then he deſired the Pretender's Spouſe ſhould ſtand Godmother to his Child. The Pretender ſaid, he would conſider of it; and Colonel *Hay* brought Mr. *Layer* Word that ſhe conſented; and it was agreed, the Dutcheſs of *Ormond* ſhould repreſent her. And *Layer* deſired to know who ſhould ſtand Godfather. To which it was anſwered, the King himſelf, meaning the Pretender. *Layer* then deſired to know who ſhould repreſent him; and it was ſaid, *Layer* might find one, when he came to *England*, proper for the Purpoſe. That when he came to *England* he went to Mr. *Thompſon*, to adviſe with him about it; who went to my Lord *Orrery*, to deſire him to ſtand as Proxy for the Pretender. My Lord *Orrery* declined it; then he went to my Lord *North and Grey*, who accepted it. The Child was chriſtened at *Chelſea*, at a Houſe, I take it, where there was a China-Shop. It was in the Spring of the Year; and he ſaid, there was his Wife, my Lord *North and Grey*, who ſtood for the Pretender, and the Dutcheſs of *Ormond*, who ſtood for the Pretender's Wife.

Vol. vi. p. 196.

[*Mr.* Stanyan *gave the ſame Evidence of his Confeſſion before the Council.*]

Serj. *Pengelly.* What did he ſay of his recommending Mr. *Lynch* at his Examination?

Mr. *Delafaye.* He ſpoke of recommending *Lynch* twice; that Mr. *Lynch* having told him he would ſeize my Lord *Cadogan*, he did recommend him to my Lord *North and Grey* as a proper Perſon for that Attempt. The ſecond Time he recommended him, he had propoſed carrying *Lynch* to my Lord *North and Grey*'s, he having told him, that he was a very honeſt Man, fit to be concerned in an Inſurrection; that *Layer* having told *Lynch*, his Lordſhip was to be at the Head of the Deſign, *Lynch* was impatient to wait upon him.

Att. Gen. Pray Mr. *Stanyan* give an Account what Arms were found in Mr. *Layer*'s Houſe.

Mr. *Stanyan.* Juſt after Mr. *Layer* was ſeized, I came in; he was juſt got out of his Bed; I obſerved in the Room where he lay, a Pair of Piſtols hung by his Bed-Side, and between them a Horſeman's Sword, a Riding-Sword, a pretty large Sword: On the other Side of the Bed next the Chimney, a little Caſe of Piſtols, and another Sword hung in another Part of the Room: In the Cloſet of the ſame Room I ſaw two Carbines or Guns, and two Muſquetoons or Blunderbuſſes. Seeing ſo many Arms, I went to handle ſome of them. Upon which he ſaid, have a Care, they are loaded; do not meddle with them. Upon that I ask'd him, what he had to do with ſo many Arms? He anſwered, you muſt know, my Clerk and I are great Shooters when we are in the Country. In another Room, looking farther, we obſerved ſeveral Molds for the making of Bullets. There was alſo a Cartridge-Box, and a Number of Cartridges ready made up, as near as I can gueſs, about forty or fifty. There was a Gentleman of the Army, and he ſaid, they were ſuch Cartridges as were us'd in the Army.

Att. Gen. Was there any Thing ſaid relating to theſe Arms before the Lords of the Council?

Mr. *Stanyan.* The Lords asked Mr. *Layer* what he did with forty or fifty Cartridges made up: He ſaid, They were made up by *Bowers* the Gun-Smith; and that if there was any Diſturbance in the Nation, he ſhould have Occaſion for them.

Colonel

[*Colonel* Huske *ſworn.*]

Att. Gen. Was you by when theſe Arms were ſeized in Mr. *Layer*'s Houſe? Vol. vi. p. 291.

Col. *Huske.* Yes; there were two Caſes of Piſtols, two Fuzees, ſome other Arms, and a Blunderbuſs, and two or three Swords, and above forty Cartridges made up as uſual, when our Soldiers charge their Pieces for Expedition in Caſe of Action; and there was a Mould for Musket-Bullets.

Priſoner. Would thoſe Cartridges that were made up go into a Fuzee?

Col. *Huske.* Theſe very Cartridges are only fit for the Army.

Mr. *Kettlebey.* Would theſe Cartridges go into a Fuzee?

Col. *Huske.* I did not try them; I do not know.

Mr. *Kettlebey.* According to my Notions, there is a Difference in Bigneſs between a Fuzee and a Musket; and a Cartridge fit for a Musket will not go into a Fuzee.

Col. *Huske.* A Cartridge that is fit for a Fuzee will go into a Musket.

Mr. *Kettlebey.* And ſo it will into a Cannon: But I ask you, whether a Cartridge fitted to a Muſket, and proper for the Uſe of a Soldier going to Battle, will fit a Fuzee?

L. C. Juſtice. Would theſe Cartridges have ſerved for the Fuzee?

Col. *Huske.* I am ſatisfied they would ſerve for the Fuzee, and the ſmalleſt Arms there, except the Piſtols.

Mr. *Kettlebey.* You ſay there were two Swords. I believe, you never are without two Swords.

Col. *Huske.* I believe I have a Dozen; but they belong to my Company.

Mr. *Kettlebey.* Did you open any of the Cartridges?

Col. *Huske.* I did; and there was a Ball made up at the End of each Cartridge.

[*Mr.* Smeybert *ſworn.*]

Sol. Gen. Have you ſeen the Priſoner at *Rome*?

Smeybert. Yes; I ſaw him there about a Year and a Half ago. He was there a Week or a Fortnight.

[*Mrs.* Hay *ſworn.*]

Serj. *Cheſhire.* Did you ever ſee the Priſoner? and where?

Mrs. *Hay.* I ſaw him at *Rome* laſt Summer was Twelvemonth.

Att. Gen. We ſhall now prove the Priſoner's Eſcape out of the Meſſengers Hands.

[*Mr.* Squire *ſworn.*]

Att. Gen. Do you know any Thing of the Priſoner's being taken?

Mr. *Squire.* He was taken the 18th of *September* laſt, and was in my Cuſtody; and the next Day he eſcaped out of my Houſe at a Saſh-Window two Stories high.

Att. Gen. What Account can you give of his being taken again?

Mr. *Squire.* He had not been gone long before I found he had made his Eſcape; and underſtanding which Way he went, I immediately purſued him, and took him in a Lane going to *St. George's Fields.* He ſaid, he was ſorry to ſee me: I asked him how he could offer to go away from me; and he ſaid, every body elſe would have done the ſame in his Condition; that nobody could blame him for it; and that he believ'd my Lord *Carteret* would not blame him.

Priſoner. Did not I ask you to ſhew me your Warrant?

Mr. *Squire.* No; you never ask'd me.

Priſoner. Did I not tell you the Reaſon I eſcaped was, becauſe I did not know what Authority you had to detain me?

Vol. vi. p. 292. Mr. *Squire.* No; you did not.

[James Peterſon *ſworn.*]

Att. Gen. Do you know any Thing of the Priſoner's Eſcape?

Peterſon.

Peterſon. Mr. *Layer* was in Cuſtody at my Father's Houſe, in a Room two Pair of Stairs backwards; but I was not at Home when he got away.

[John Sweet *ſworn.*]

Att. Gen. Do you remember you ever ſaw the Priſoner?

Sweet. Yes; I ſaw him juſt going into *St. George's-Fields*; and was the firſt that took him.

Att. Gen. What did he ſay to you when you took him?

Sweet. He ſaid, for God's Sake let me go; it is an Arreſt. Then my Partner came up; and looking about me I ſaw another Perſon coming up, who was the Meſſenger. Whereupon he put his Hand in his Pocket, and pull'd out, I believe, forty Guineas, and ſaid we ſhould take what we would if we would let him go; but we would not.

[Anthony Stephens *ſworn.*]

Att. Gen. What did *Layer* ſay when he was firſt taken?

Stephens. We ask'd if it was for an Arreſt. Yes, ſays he, it is an Arreſt. And when he ſaw Mr. *Squire*'s Son coming after us, he would give us whatever we pleaſed to let him go; and more than that, he ſaid, he had no Warrant; and he did not know that they could keep him without a Warrant.

Serj. *Pengelly.* My Lord, we have gone through our Evidence, and ſhall reſt it here.

The Priſoner's Counſel make their Obſervations on the King's Evidence.

Mr. *Hungerford.* I am of Counſel for the Priſoner; and after ſo long an Evidence, it will beſt become me to draw the Matter in Debate to a ſingle Point. My Lord, the Priſoner is indicted on the 25th of *Edw.* III. call'd the Statute *de Proditionibus.* The Things declared to be Treaſon by that Act are, the Compaſſing or Imagining the Death of the King or Prince, and ſome other Attempts againſt the Royal Family; and then declares, likewiſe, that it is Treaſon to levy War againſt the King; not to deſign or contrive to levy War, but actually to levy War only ſhall be Treaſon. The Treaſon laid to the Priſoner's Charge, is the Compaſſing and Imagi-

ning the Death of the King. The Overt-Acts laid to his Charge are, That he did conſult and conſpire to levy War; That he did publiſh a certain treaſonable Libel, purporting among other Things, a Promiſe of Reward to his Majeſty's Subjects to riſe in Arms, and levy War againſt the King; That he conſulted to ſet the Pretender on the Throne; That he liſted Soldiers for him; and laſtly, That he conſulted to ſeize and impriſon the King.

There is no Evidence of any of theſe Overt-Acts in *Eſſex*, unleſs that of publiſhing a treaſonable Libel, which the King's Counſel would inſinuate to be the Pretender's Declaration. The Evidence of the other Overt-Acts are attempted to be prov'd in *Middleſex*. But Gentlemen, the Indictment being laid in *Eſſex*, if an Act of High-Treaſon is not prov'd to have been committed by the Priſoner in that County, he muſt be acquitted.

I might here inſiſt, that an actual levying of War, and not *deſigning* to levy War, being made Treaſon by the Statute, the publiſhing a Paper which purports but an *Intention* only to levy War, or raiſe a Rebellion, is not Treaſon. This Opinion is warranted by the expreſs Words of the Act itſelf, and by the Opinions * of the Chief Juſtices *Coke* and *Hales*; and if this be not the Meaning of the Act, one Paragraph, namely, that which declares actual levying War High Treaſon, is ſuperfluous; for to what Purpoſe is the actual levying of War made a diſtinct Species of Treaſon, when the *Intention* of doing it was Treaſon within the firſt Clauſe of the Act. This Opinion ſeems confirm'd alſo by two Acts of Parliament, one in † Queen *Elizabeth*'s, and the other in King *Charles* II's Reign, where conſulting or intending to levy War or Rebellion is made High Treaſon during the Lives of thoſe reſpective Princes; for which temporary Proviſion there could be no Reaſon, if the Law were ſo before. I only hint this Matter to your Lordſhip: I know what Determinations the Judges have given upon this Objection of late Years. But I hope there will be no Occaſion for an entire Dependance on this Objection,

* *Coke*'s Inſt. Cap. I. p. 9, & 10. *Hale*'s Pleas of the Crown, p. 13.

† 1 *Eliz.* Cap. I. 13 *Car.* II. Cap. I.

tion; for that it will appear to the Court, that no ſuch Overt-Act as is laid in the Indictment, namely, the publiſhing the Pretender's Declaration at the *Green-Man*, is at all prov'd. Vol. vi. p. 293.

Mr. *Lynch* is the only Evidence of this Matter, who ſays, That he and the Priſoner met at *Aldgate*, to go to my Lord *North*'s; and that finding themſelves too late to be there at Dinner, they call'd at the *Green-Man*, and got a Beef-Steak; and before it was brought up, the Priſoner gave Mr. *Lynch* a Paper, which Mr. *Lynch*, and not the Priſoner, calls the Pretender's Declaration; and Mr. *Lynch* read only one Paragraph in it, where he ſays, the Soldiers were attempted to be allur'd from his Majeſty's Service. This is the whole Evidence given, touching any Offence committed in the County of *Eſſex*. Now the Time that the Priſoner and Mr. *Lynch* ſtaid at the *Green-Man*, ſeems to be very ſhort: There is no Evidence that the Horſes were put up: The Beef-Steak was beſpoke before they went into a Room: Mr. *Lynch* came down twice, and was gaping at ſome Perſons in the Yard that he knew; and yet before the Beef-Steak was brought up, this Declaration is pretended to be publiſh'd. For my Part, I can't think there could be Time for ſo ſolemn an Act as publiſhing a Declaration to overturn three Kingdoms. But in the ſecond Place, if the Priſoner, which I don't admit, did give Mr. *Lynch* any Paper to read, a Paragraph whereof was to the Purpoſe Mr. *Lynch* relates, yet ſuch Paper cannot be imputed to the Priſoner as an Act of High Treaſon. There was but a few Lines of the Paper read, and the reſt were not read at all, neither by Mr. *Lynch* or the Priſoner; and I never knew that Part of a Deed or Writing was ever allow'd to be given in Evidence, without producing the whole. In the Caſe of my Lord *Ruſſel*, where the Declaration for Rebellion was aſſign'd as an Act of High-Treaſon, the whole Declaration was prov'd to be read, and not a Part only; and yet even that Evidence was upon the Revolution look'd upon ſo imperfect, that for this and other Reaſons, the Lord *Ruſſel*'s Attainder was revers'd. Can it be ſaid, that the Priſoner giving Mr. *Lynch* a Paper, of which he reads only a few Lines, is a publiſhing of a treaſonable Paper, or in Truth, a publiſhing any Paper at all?

all? Declarations for Rebellion are commonly publiſh'd in publick Places, to captivate Multitudes: There was no appointed ſolemn Meeting at the *Green-Man*; no Concourſe of People; only a Writing handed from one Man to another while they were expecting a Beef-Steak.

Before the Statute of Treaſons, People labour'd under great Uncertainties what was High Treaſon, and what was not; whereupon, to eaſe the People of that Perplexity, in 25 *Edw.* III. the Law of Treaſons paſs'd, for which the Nation paid a great Sum of Money; and that Parliament was call'd, *The Bleſſed Parliament.* Now if every Act a Man doth, though perhaps tending to Sedition, ſhall be interpreted an Overt-Act of High-Treaſon, the Subject will labour under the ſame Inconveniencies he did before the Statute of Treaſons. This Practice may be ſo far improv'd, that if a Man delivers a ſeditious Ballad to another to be read, that ſhall be interpreted an Overt-Act of High Treaſon; much more if People in their Cups ſhould drink ſuch Healths as were ſaid to be drunk at my Lord *North*'s; for *Bibere eſt agere*, whatever *Scribere* is: This is what occurs to me concerning the Charge of High Treaſon in the County of *Eſſex*; and if there be no Charge made out againſt him there, the Evidence of what he did or ſaid elſewhere goes for nothing.

Vol. vi. p. 294.

Mr. *Kettlebey.* The Charge againſt the Priſoner is of the higheſt Nature, no leſs than Conſpiring and Compaſſing the Death of the King; and as it is an Offence not capable of any Aggravation, or to be alleviated by any Thing that we can offer, we hope your Lordſhip and the Gentlemen of the Jury will expect the ſtrongeſt Evidence of it, ſuch as the Law requires, and is in ſome Meaſure proportionable to the Greatneſs of the Offence. My Lord *Coke*, in his *Third Inſtitutes*, *Fol.* 12. in his Comment on the Act of Treaſons, ſays, The Proof muſt be direct and manifeſt, not founded upon conjectural Preſumption, or Inference, or Strains of Wit. The late Act of 7 *Will.* III. enacts, That there muſt be two lawful Witneſſes to the ſame Overt-Act, or one of them to one, and the other of them to another Overt-Act of the ſame Species of Treaſon; and that no Evidence ſhall be given of any Overt-Act not laid in the Indictment. [*Here Mr.* Kettlebey *having*

having repeated the Evidence Mr. Hungerford *had ſumm'd up before, of publiſhing the Declaration at the* Green-Man *in* Eſſex, *goes on.*] If the Priſoner had pulled out of his Pocket the moſt treaſonable Paper that ever was invented, is it any more than publiſhing a Libel? Is that an Overt-Act of Treaſon? Suppoſe it a Copy of the Pretender's Declaration, or an Original, ſuch an one as was burnt by the Sheriffs of *London* two Days ago; if a Man had pull'd that out of his Pocket, and gave it to another to read, is this High Treaſon? I dare ſay, if any ſuch Perſon falls into Mr. *Attorney*'s Hands, he that always does his Duty to the Crown, as he ought, will go no higher than an Information for publiſhing a Libel. But ſuppoſe what paſs'd at the *Green-Man* (which I am very far from admitting) ſhould be adjudg'd an Overt-Act of High Treaſon, it is prov'd but by one Witneſs; and the Law requires two in High Treaſon; and that the Jury ſhould be return'd out of the County where the Facts are laid, becauſe it ſuppoſes them more connuſant of a Caſe which riſes in their Neighbourhood. But if the Proof of one Overt-Act in the County where 'tis laid by one Witneſs, ſhould be ſufficient to let them in to prove other Overt-Acts in diſtant Countries, or in foreign Kingdoms, theſe fundamental Rules of Law would be totally ſubverted. How is it poſſible for a Man to provide or defend himſelf againſt ſuch an Attack? 'Tis ſpringing a Mine upon him, ſudden and unexpected Ruin.—— Mr. *Attorney* won't ſhew any Precedent where it ever was allow'd to be good, that one Witneſs might prove the Overt-Act in the County where it was laid, and then they might give Evidence of Overt-Acts committed in any other County. If your Lordſhip is of Opinion againſt us in this Particular, then we muſt beg Leave to go farther, and obſerve upon the reſt of the Witneſſes, not only to take off their Credit, but to contradict them in a great Meaſure. Vol. vi. p. 295.

L. C. Juſtice. You muſt go on. You have mix'd your Diſcourſe ſo, that no Body knows what to make of it.

Mr. *Hungerford.* Since it is your Pleaſure we ſhould go on, now I ſhall make ſome Obſervations on the reſt of the Evidence given againſt the Priſoner out of the County of *Eſſex*, though I depended on the

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Mr. *Hungerford.* Since it is your Pleaſure we ſhould go on, now I ſhall make ſome Obſervations on the reſt of the Evidence given againſt the Priſoner out of the County of *Eſſex*, though I depended on the

the Inſufficiency of the Evidence, touching any Act of High Treaſon being committed in *Eſſex*, and I hoped that from that very Circumſtance the Priſoner would have been acquitted.

The Evidence of the ſecond Witneſs, *Plunket*, ought to weigh but very little. The Priſoner's meeting with this Man was very accidental in *Lincoln's-Inn-Fields*, when they did not know each other; and yet they immediately enter'd into a Diſcourſe of raiſing a Rebellion, and overturning two Kingdoms; and that great Secret of knowing who was to be General, was communicated to this eminent Witneſs *Plunket* at firſt Interview, though Mr. *Lynch*, after long Acquaintance, could not get it out of the Priſoner. Mention was alſo made of two very great Men more, namely, the Earl of *Straſford* and General *Webb*, as well affected to the Undertaking; but their Services to their Country are too well known to be blemiſh'd by ſuch an incredible Evidence. After ſome Diſcourſe, whether the Lutheran Religion was preferable to the Popiſh, and the Priſoner had communicated to *Plunket* an Intention of invading the Kingdom by ſome Perſons from Abroad, the Priſoner in a very great Fit of Bounty, preſents Mr. *Plunket* with the Sum of half a Crown. This Relation ſeems to be ſo improbable, and deliver'd (or rather ſtammer'd out) in ſo wretched and incoherent a Manner, that I believe no one that heard it, believes a Word of it. The Truth is, the Scheme itſelf ſeems rather to be a chimerical Plan of ſome crazy-pated Politicians, than a ſolid Project of any Man of Senſe. The ſeizing the General of the Army, the *Tower*, the *Exchange*, the Bank of *England*, and all this with a Force which does not appear to conſiſt of more than three or four Men. And for Money, the Sinews of War, there ſeems to be no great Stock of that: *Plunket* hath about half a Crown at one Time, and half a Guinea at another. Mr. *Lynch*, indeed, who ſeems to be a Man of greater Weight, upon his frequent repeating himſelf to be very uneaſy, got about ſeven or eight Guineas. Theſe Things I mention, Gentlemen of the Jury, to ſhew how improbable this Part of the Evidence is of itſelf, and we hope to make it appear more ſo, by the Evidence we ſhall produce to the Reputation of the Witneſſes. As to the Papers of

all

all Kinds produc'd as Evidence againſt the Priſoner, we hope he cannot be affected by them, none of them being prov'd to be his Hand-Writing. As to the Arms found in his Houſe, they are no more than what Gentlemen uſually have for the Defence of their Family, or their Recreations. His being at *Rome*, it is admitted, is not Evidence againſt him on this Indictment; and as to his Eſcape, it is no Evidence of the Priſoner's Guilt. Every Man under Confinement would willingly eſcape, and be at Liberty: I do not enter into the Conſideration, whether the Cuſtody of a Meſſenger be a legal Priſon, or no. Beſides, the Priſoner hath already ſuffer'd for that Offence, if it be one. He hath been put in Irons; and his attempting to eſcape, is the only Reaſon that is aſſign'd for it.

It has been ſaid, in the Introduction to this Charge, That it was a Deſign, which if it had took Effect, would have engaged the whole Nation in Blood, and have deſtroy'd our religious and civil Rights. We who are of Counſel for the Priſoner, have as great an Abhorrence of a Thing of that Nature, as any Men can have. But yet we hope Mankind is Vol. vi. p. 296. not to be led away with Shew and Colour, but to be guided by Reaſon and Matters of Fact. Is it poſſible that Men could have been raiſed into a Rebellion by a Proclamation which was never publiſh'd, but by Mr. *Lynch*'s reading two or three Lines of it, and which, by his own Evidence, was imperfect? for he ſays the Priſoner told him he intended to put in the Pretender's Name, which was not then done; and therefore what was produc'd, was, at the utmoſt, an imperfect Piece only. Is it to be ſuppoſed, that the Priſoner at the Bar, a Man of a Gentleman-like Family, indeed, but of no great Figure or Eſtate in the World, and having no Dependance, or numerous Acquaintance, no Proviſion of Men, Arms, or Ammunition, ſhould, with the Aſſiſtance only of a Bundle of Papers, and Mr. *Lynch* and Mr. *Plunket*, overturn and enſlave this whole Kingdom? God be thanked, the Proteſtant *Britiſh* Government is not ſo eaſily to be brought to Deſtruction; they might much ſooner (and yet I think that very difficult too) have borrowed an 100,000*l.* of the Bank of *England*, upon the blind Notes they produc'd ſent by Sir *William Ellis*, than have brought about

about a Revolution in this Kingdom with ſuch Materials as they ſeem poſſeſſed of.—[*And he concludes with the Words of the late Lord Chief Juſtice* Scrogg's,] *viz.*

Vol. vi. p. 296.

" If once our Courts of Juſtice come to be aw'd " or ſway'd by vulgar Noiſe; and if Judges and Ju- " ries ſhould manage themſelves ſo as would beſt " comply with the Humours of the Times, 'tis falſly " ſaid, That Men are try'd for their Lives or For- " tunes; they live by Chance, and enjoy what they " have as the Wind blows, and with the ſame Certain- " ty.—Let us purſue the Plot in God's Name, and not baulk any Thing where there is Danger or Suſpicion upon reaſonable Grounds; but not ſo over-do it, as, to ſhew our Zeal, we will pretend to find what there is not, nor ſtretch one Thing beyond what it will bear to reach another.

Mr. Kettlebey. I cannot but take Notice of one Thing in *Plunket*'s Evidence, which renders it impoſſible to be true: He gives an Account of a Letter he received about ten Weeks ago, and is very poſitive as to the Words of the Letter; and yet it appears he can neither write nor read. He ſays, indeed, it was read over twice to him; and we have heard him repeat it three Times; and I appeal to the Jury, if any one of them can repeat it again with that Exactneſs the Witneſs pretends to do.

Is it not equally ſtrange that *Jeffereys*, a Man of Letters, ſhould immediately fall into Diſcourſe with him, an ignorant Serjeant, about the Plot, and raiſing a Rebellion; and the ſame he ſays of *James Plunket*, the firſt Day he came to him. Beſides, there is a manifeſt Contradiction in his Evidence; for at firſt he ſays the Nonjuring Parſon told him his Name was *Jeffereys*'s the firſt Time he ſaw him; and afterwards he ſaid the firſt Time he knew his Name to be ſo, was upon the Receipt of a Letter to which he ſubſcribed his Name.

We ſhall give an Account of *Plunket*, *Lynch*, and Mrs. *Maſon*, who are the principal Witneſſes, that they are of ſo ſcandalous and vile a Character, that no Regard at all is to be had to their Teſtimony.

Mr.

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* Lord Chief Juſtice *Scrogg*'s Speech the Firſt Day of *Michaelmas* Term, 1679. printed that Year.

Mr. *Hungerford.* We ſhall call our Witneſſes.

[*Mr.* Mackreth *ſworn.*]

Mr. *Hungerford.* Pray give the Court an Account if Mr. *Layer* or Mr. *Lynch* were at your Houſe laſt Summer. Vol. vi. p. 297.

Mackreth. I never ſaw Mr. *Layer* before in my Life, as I know of.

[*Mrs.* Mackreth *ſworn.*]

Mr. *Hungerford.* Pray do you remember any Travellers at your Houſe on the 25th of *Auguſt* laſt?

Mrs. *Mackreth.* I never ſaw the Gentleman in my Life, as I know of.

[John-Paul Freeman *ſworn.*]

Mr. *Hungerford.* Do you remember any Thing of this Gentleman's being at your Maſter's Houſe the 25th of *Auguſt* laſt?

Paul Freeman. To my Knowledge, I never ſaw him before in my Life.

[*Lord* North and Grey *ſworn.*]

Mr. *Hungerford.* If your Lordſhip pleaſe to give my Lord and the Jury what Account you have of one *Lynch*.

Lord *North and Grey.* My Lord he came twice to my Houſe in *Eſſex:* The Gentleman was wholly a Stranger to me; and I have never ſeen him ſince. I cannot ſay I know any Thing of him perſonally. The only Thing I can ſay, is, what he ſaid of himſelf. It is a little hard for a Man of Honour to betray Converſation; what paſs'd over a Bottle of Wine in Diſcourſe; but ſince your Lordſhip requires it, I muſt ſubmit. —— He was repreſented to me as a Stranger newly come to *England*, and had a Mind to ſee my Houſe and Gardens: He was brought there accordingly by Mr. *Layer*; and I received him civilly. In Proceſs of Time he told me the Hiſtory of his Life: That he was not a *Spaniſh*, but an *Iriſhman*, and, I think, educated in the Camp under an Uncle of his. He told me, that when he was a young Man he had taken a great many Liberties.

Serj.

Vol. vi. p. 298.

Serj: *Pengelly.* We apprehend this Evidence is not proper to be given. If they have any particular Queſtions to ask my Lord, as to the Character of Mr. *Lynch* in general, let them propoſe them; but thus to give an Account (by Way of Repetition of a Diſcourſe between Lord *North and Grey* and Mr. *Lynch*) where he was born and bred, and a Hiſtory of particular Facts, is what they ought not to do.

Lord *North and Grey.* I am glad to be interrupted by that worthy Gentleman. I only deſire to know to what Points you would be pleaſed to ask me.

L. C. Juſtice. Mr. *Hungerford*, you are not to examine to particular Facts to charge the Reputation of any Witneſs, but only in general to ask what his Character and Reputation is.

Mr. *Hungerford.* My Lord *North and Grey* is an entire Stranger to him: He was only going to tell you what Account *Lynch* gave of himſelf.

Mr. *Kettlebey.* If that noble Lord was going to give any Character of him which he heard from other Perſons, it might alter the Caſe; but ſurely when the Character he gives him is grounded on what he ſaid himſelf, that is much ſtronger than the Hear-ſay of others; and therefore we hope he ſhall give it in Evidence.

L. C. Juſtice. You know, if there be any Objection to him to his general Character, he can anſwer them; but if Objections are grounded on particular Charges of his being a baſe, an infamous, and an ill Man, not having any Notice of this, it is impoſſible to defend himſelf. —— If you will ask my Lord *North and Grey* what general Character he gave of himſelf, you may.

Mr. *Hungerford.* If my Brief be true the whole Ten Commandments be broken by him.

L. C. Juſtice. And ſo you charge him with the Breach of the Ten Commandments; and he muſt let it go for Fact, becauſe he cannot have an Opportunity of defending himſelf.

Mr. *Kettlebey.* What Character in general did he give of himſelf to your Lordſhip?

Lord *North and Grey.* I don't know how to anſwer it, as to his giving a general Character of himſelf. I ſaw him twice: The firſt Time, he was brought down by the Gentleman at the Bar; the ſecond

cond Time he came he was ill received; and I ordered it ſhould be told him, that in caſe he deſigned to ſtay there, I had no Room to lodge him. As to particular Things, I don't care to ſpeak of them. I ſhould be ſorry to ſay it, when it was ſaid in my Company, and under my Roof.

Mr. *Hungerford.* We will not preſs it farther.

Lord *North and Grey.* I muſt beg your Lordſhip's Leave, if the Gentlemen have no farther to ſay to me, and your Lordſhip have no farther Commands, that I may return to my Priſon.

[George Talbot *ſworn.*]

Mr. *Hungerford.* What Character hath Mr. *Lynch*?

Talbot. He hath a very bad Character.

Att. Gen. How long have you known him?

Talbot. I have not ſeen him theſe ſix Years: I met with him at the Canaries, when I was coming from thence ſix Years ago. I know nothing of him ſince.

Mr. *Kettlebey.* Have you had a Character of him?

Talbot. The worſt I could ever hear of any Perſon. I know nothing of my ſelf, but what I have heard from others.

[*Mr.* Winchman *ſworn.*]

Mr. *Hungerford.* Pray give the Court an Account what you know of this *Stephen Lynch*? Vol. vi. p. 293.

Winchman. I knew him fourteen Years ago in the Canaries, where he kept an *Iriſh* Gentleman Company, one *Wilſon*. He was then well beloved by every Body. The Gentleman took him into his Company; and afterwards he grew extravagant; and the Gentleman turned him out of his Company.

Mr. *Hungerford.* Is he accounted an honeſt Man, or a Knave?

Winchman. I will not truſt him for any Thing.

[James Darcy *ſworn.*]

Mr. *Kettlebey.* What is the Character of Mr. *Stephen Lynch*? Is he a Man to be credited?

Darcy. I don't take it that he is.

Att. Gen. Where did you know him?

Darcy. I firſt knew him laſt *Winter* in *London.*

Mr. *Hungerford.* Is Mr. *Fitz-Gerald* there? My Lord, here is a Complaint that the Witneſſes can't be let in.

L. C. Juſtice. They muſt be let in.

Sol. Gen. It is the Buſineſs of your Solicitor to ſee that Way is made for the Witneſſes.

Mr. *Hungerford.* It is not the Buſineſs of your Witneſſes to ſtop the Paſſage.

Sol. Gen. They don't ſtop the Paſſage.

Mr. *Hungerford.* No! What is your buſy Colonel there [*pointing to Colonel* Huske] a doing?

[*Mr.* Blake *ſworn.*]

Mr. *Hungerford.* Do you know *Stephen Lynch*? Is he a Perſon to be believed?

Blake. I believe he is not: I heard a very ill Character of him about ſix Years ago. I have heard he married two Wives; but I know nothing but by Hearſay.

[Collins *ſworn*]

Mr. *Hungerford.* Give the Court an Account what you know of *Stephen Lynch*?

Collins. I know him by Eye-Sight only. He hath a very infamous Character.

[*Mr.* French *ſworn.*]

Mr. *Hungerford.* What Character hath *Stephen Lynch*? Is he to be credited?

French. I don't think he is. I have known him ſix or eight Months.

[*Mr.* Kelley *and Mr.* Blake *ſworn.*]

Mr. *Kettlebey.* Mr. *Kelley*, what is the Character of *Stephen Lynch*?

Kelley. I have known him ſince *April* laſt: I never heard any give him a Character that was not very vile.

Mr. *Kettlebey.* Mr. *Blake*, how long have you known Mr. *Lynch*?

Blake. I never had any Acquaintance with him: But I have heard he hath a vile Character.

Mr. *Kettlebey.* What did he ſay of Mr. *Layer*?

Blake.

Blake. He ſaid he would hang him.

Mr. *Kettlebey.* Did he ſay any Thing about the Vileneſs of the Plot?

Blake. I heard him ſay my Circumſtances are very poor. I was forc'd to do this: But if I had got off from this Affair: I would fight any Dozen People in *London* to come off from it. Vol. vi. p. 309

Mr. *Hungerford.* In the Converſation you had with *Lynch*, was there Talk of any Money he was to have, Mr. *Darcy*?

Darcy. I went to ſee Mr. *Lynch* on Account of ſome Money I lent him; and asked him for it, and how he got Money, and ſeveral fine Cloaths, which he had. He told me a Lady uſed to come twice or thrice a Week to viſit him; and this Lady was the Miſtreſs or Daughter of one of the Chief Miniſters of *England*. He ſaid this Woman——

L. C. Juſtice. You muſt not put him in this Way.

[Terry *ſworn.*]

Priſoner. Hath *Lynch* the Character of an honeſt Man?

Terry. He hath the Character of being a looſe young Fellow: That's all I know of him.

[*Mr.* Hamilton *ſworn.*]

Priſoner. What Character has *Stephen Lynch*?

Mr. *Hamilton.* A vile infamous Character; one that will do or ſwear any Thing.

[*Mr.* Thomas Brown *ſworn.*]

Mr. *Kettlebey.* What Character hath *Plunket*?

Brown. I have known him theſe ten Years: He has but an indifferent Character. I don't think him to be believed.

[*Mr.* Keating *ſworn.*]

Mr. *Kettlebey.* What Character has *Plunket*?

Keating. I did not know him before the Beginning of *July* laſt: He has a very bad Character; a drunken idle Fellow, always kept Company with other Women.

[*Sir* Daniel O-Carrol *ſworn.*]

Mr. *Hungerford.* What is *Plunket*'s general Character?

Sir *D. O-Carrol.* A very bad one. I would not take his Evidence to hang a Dog.

Mr. *Hungerford.* And here he attempts to hang a Proteſtant.

[*Mr.* Thomas Spelman *ſworn.*]

Mr. *Kettlebey.* What is *Plunket*'s general Character?

Spelman. I never knew any ill done by him: He had a Diſpute with Sir *Daniel O-Carrol* about a Horſe.

[Edward Barnwell *ſworn.*]

Vol vi. p. 301.

Mr. *Hungerford.* Do you know *Plunket*'s Character? Is he to be believed?

Barnwell. I muſt tell you that I found him in ſo many Miſtakes about his own Wife, that, by G—d, I would not take his Word for a Half-penny.

Mr. *Kettlebey.* What did Mr. *Plunket* ſay to you?

Barnwell. He told me Mr. *Layer* gave him Half a Crown, in Kindneſs for the Service he had formerly done him, in turning the Officers out of his Houſe.

Mr. *Hungerford.* This contradicts what *Plunket* ſays paſs'd between him and Mr. *Layer* in *Lincolns-Inn-Fields*, with reſpect to the giving him Half a Crown: It ſeems to be for former Service.

[*Mr.* Matthew Philips *ſworn.*]

Priſoner. What Character hath *Plunket*?

Philips. The Character every Body gives him, is, That he is not to be believed.

[Alexander Philips *ſworn.*]

Mr. *Kettlebey.* How long have you known *Plunket*?

Alex. Philips. About eleven Weeks.

L. C. Juſtice.

L. C. Juſtice. I never heard the like: Moſt of your Witneſſes have known him but a little Time, Seven, Eight, Eleven Weeks, *&c.* It would almoſt make a Man ſuſpect that ſome People had been ſet on Purpoſe to give an ill Character of theſe People upon this Occaſion.

[Patrick Mahone *ſworn.*]

Mr. *Kettlebey.* What Character has Mr. *Plunket*?

Mahone. I have known Mr. *Plunket* ſeveral Years. He was an idle broken Man, a great Lyar, and not to be believ'd; I have found him to lye backwards and forwards.

[*Mrs.* Child *ſworn.*]

Mr. *Kettlebey.* Have you had any Diſcourſe lately with *Plunket* the Serjeant?

Mrs. *Child.* I was with Mr. *Plunket* when he was in the Meſſenger's Hands; and he ask'd me why my Husband did not come to ſee him? I ſaid, he is confin'd on your Account. He ſaid he was going to get a Settlement for Life.

Mr. *Kettlebey.* What was he to get a Settlement for?

Mrs. *Child.* For what he ſaid of Mr. *Layer*; a Story he had told me of my Husband. Vol vi. p. 302.

L. C. Juſtice. You have call'd a great many Witneſſes, to the Diſreputation of *Lynch* and *Plunket*, to ſay they have generally ill Characters, and are vile infamous Fellows, not to be believed; and there is the Subſtance of all your Evidence, if you ſtay here till Morning.

[Alice Dun *ſworn.*]

Mr. *Kettlebey.* What Character hath *Plunket*?

A. Dun. He lived with another Man's Wife: He hath a bad Character, and is not to be believed.

[John Richmond *ſworn.*]

Mr. *Kettlebey.* When did you ſee *Plunket*? and what Diſcourſe had you with him?

Richmond. I ſaw him three Weeks ago. He ask'd me if I was Servant to Mr. *Layer*? I ſaid I was. And in Diſcourſe I ask'd him if ever he had received any Money of Mr. *Layer* for the Uſe of the Pretender? He kneel'd down upon his Knees, and ſtruck himſelf on his Breaſt, and ſaid he had never received any Money of Mr. *Layer* for the Uſe of the Pretender. I believe it was about ſix Weeks ago.

L. C. Juſtice. I wou'd be glad to know that he never received any Money for the Uſe of the Pretender. What do you mean by that?

Mr. *Hungerford.* Your Lordſhip remembers *Plunket* ſwore, that *Layer* gave him half a Crown at one Time, and other Money at ſeveral other Times, and now he ſolemnly ſwears, upon his bended Knees, that he never receiv'd any Money for the Uſe of the Pretender, that is, upon his Account.

Mr. *Kettlebey.* We will leave it here as to *Plunket*, and call Witneſſes to Mrs. *Maſon*'s Character.

[*Mrs.* Clayton *ſworn.*]

Mr. *Kettlebey.* Do you know Mrs. *Maſon*, or Mrs. *Buda*, or Mrs. *Herbert*? or what do you call her?

Mrs. *Clayton.* I know her by all thoſe Names: *Buda* is the Name ſhe always us'd to go by. She hath gone by the Name of *Maſon*, and *Bevan*, and *Herbert:* Her Character is very bad.

Mr. *Kettlebey.* Have you had any talk with her about Sir *John Meers* and his Man *Thomas*?

Mrs. *Clayton.* I have heard her ſay, that——

Sol. Gen. They are asking what the Witneſs hath heard Mrs. *Maſon* ſay to a particular Fact, which ſurely is not a proper Queſtion.

Mrs. *Clayton.* Going one Day to Mrs. *Maſon*'s, I ſaw Mr. *Layer* there. He had ſent a Porter for Mrs. *Maſon* When ſhe came, ſays he, the Parliament-Man I was ſpeaking of is not provided of the 300*l.* I have a good Mind to lend it him.

Mr. *Hungerford.* Pray how does Mrs. *Maſon* get her Living?

Mrs. *Clayton.* By deluding young Women, and carrying them about for Money.

Mr. *Hungerford,*

Mr. *Hungerford.* That is to ſay, a Bawd; is it not?

Mr. *Kettlebey.* Did you hear of any Rewards ſhe was to have by coming here?

Mrs. *Clayton.* She ſaid ſhe was to be paid, or elſe ſhe would not do it.

[*Mrs.* Pierce *ſworn.*]

Mr. *Hungerford.* What do you know of this Mrs. *Maſon*?

Mrs. *Pierce.* I lodg'd in the Houſe where ſhe did. She had a bad Reputation.

Serj. *Pengelly.* You have ſeen Mr. *Layer* there?

Mrs. *Pierce.* Yes.

[*Mr.* Dyer *ſworn.*]

Mr. *Kettlebey.* Do you know Mrs. *Maſon*? Vol. vi. p. 303.

Dyer. She liv'd with me thirteen or fourteen Years ago: She robbed my Shop; and I ſent her to *Bridewell.*

L. C. Juſtice. I deſire you to forbear this irregular Practice.

[*Mrs.* Bosket *ſworn.*]

Priſoner. Did you hear Mr. *Lynch* ſay what Reward he was to have for ſwearing againſt me?

L. C. Juſtice. That muſt not be.

Priſoner. Did you hear him ſay, he was to have 500 *l.* for ſwearing againſt me?

L. C. Juſtice. We have a Compaſſion for you, and therefore bear this from you, which we would not do from any body elſe.

Sol. Gen. My Lord, this is not to be endured. The Priſoner turns about to the Jury, and tells them that *Lynch* ſaid he was to have 500 *l.* a Year.

L. C. Juſtice. If you did but conſider of how little Conſequence it would be to you, you would not do it. When you thought fit to make him your Confidant, carry him to the *Green-Man* with you, and to my Lord *North and Grey*'s, and there he was entertain'd courteouſly by him; and do you come now to brand him with being an ill Man? And for this Woman, if you would do your ſelf

Service, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand: Prove ſomething of that, and theſe Proofs will be of more Service to you than ten thouſand of theſe Witneſſes.

Priſoner. If I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Mr. *Hungerford.* It was never proved to be his Seal.

L. C. Juſtice. You are miſtaken. The Woman ſwore it was his Seal; and the Officers ſwore they were under the Seals when they ſeiz'd them: And it is proved now to be his Seal; for the Seal is viſible.

Priſoner. My Lord, it is not my Seal. I deſire Major *Barnwell* may be ask'd as to this Woman's Character.

Maj. *Barnwell.* She is a vile Woman. She had like to have cheated me of 1500 *l.* She is not to be credited.

[*Mr.* Lebatt *ſworn.*]

Priſoner. Pray give the Court an Account, whether Mrs *Maſon* ought to be credited?

Lebatt. No; ſhe would take away any body's Life for a Farthing.

Mr. *Hungerford.* We will cloſe our Evidence as to the Character of theſe Witneſſes againſt the Priſoner at the Bar. We hope we have proved them to be ſo infamous, as no Jury on Earth will believe them.

Priſoner. I beg Pardon. Here is a mighty Talk of Arms: I am ſo fortunate as to have a Perſon here that will give an Account of them.

[*Mr.* Bowers *ſworn.*]

Vol. vi. p. 304. *Priſoner.* Pray give the Court an Account of a Blunderbuſs, a Fuzee, a Carbine, and Piſtols. Did not you owe me 6 *l.* on a Note under your Hand?

Bowers. About five or ſix Months ago Mr. *Layer* had a Law-Suit for me. I ſold him a Pair of Piſtols, and a little after another Pair: Mr. *Layer* had them for a Debt. He had in his Houſe two Guns, I gave him one of thoſe Guns. There is

a

another Gun and a Musket which Mr. *Layer* had of me.'— He had a Note of mine for 6 *l.* which I ow'd him. I importuned him to take a Carbine for a Man to ride with, and a Blunderbuſs for his Houſe, in order to ſet off this Debt; and I brought him them when he was going into the Country. I brought him three Dozen and half of Cartridges: You bid me bring a Dozen and half, or two Dozen; and I brought three Dozen and half to ſhorten my Debt.

[*Mr.* Raynham *depos'd, that he was to have another of the Guns, on Condition of his carrying on a Suit of Law.*]

[*Mr.* Samuel Steward *ſworn.*]

Priſoner. Pray give an Account whether, or no, I was not entruſted with Things of great Value of Money, to put out on Mortgages, and what Occaſion I might have for a few Arms?

Steward. Yes; to the Value thirty or forty thouſand Pounds within theſe two Years.

Mr. *Kettlebey.* Look upon the Paper they call the Scheme. Is that his Hand-Writing?

Steward. I have ſeen him write a thouſand Times; and I do not believe it to be his Hand, or like it. You write a ſhort Character; this is a long one.

[*Mr.* Bennet, *Clerk to Mr.* Layer, *ſworn.*]

Mr. *Kettlebey.* Have you been acquainted with the Hand-Writing of Mr. *Layer*?

Bennet. I have ſeen him write a thouſand Times.

Mr. *Kettlebey.* Do you believe this Paper to be his Hand-Writing? [*The Scheme.*]

Bennet. I do not think it his Hand-Writing. I never ſaw him write ſuch a Hand as this.

Att. Gen. Shew him that Paper. [*Which was ſeiz'd in the Bundle.*] Do you know whoſe Hand-Writing that is?

Bennet. I believe it is my own Hand-Writing.

Att. Gen. By whoſe Direction did you write it?

Bennet. By Mr. *Layer*'s Direction.

Clerk

Clerk of the Court. It is Part of a Jury between *Layer* and one *Watſon.*

Att. Gen. This was taken in the Bundle of Papers where the Liſts were.

Mr. *Kettlebey.* We apprehend we have prov'd this Scheme not to belong to Mr. *Layer* by two Witneſſes, who have known him many Years, and ſeen him write a great many Times.

Vol. vi. p. 305. Mr. *Hungerford.* The Main of the Charge againſt this Gentleman is, that he deſign'd to raiſe an Inſurrection. How that is prov'd, I have ſpoke to already; but this muſt be allow'd, that whatever Deſolation and ill Conſequences might have enſued, there has been no Blood ſhed, no Armies raiſed, or Invaſions attempted; and I think upon ſuch an Evidence as comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reach'd.

Priſoner. My Lord, as to *Lynch*, it appears our going down into *Eſſex* was purely accidental: We did not ſtay three Quarters of an Hour at the *Green-Man*, and he went down twice in the Time; and yet all this mighty Buſineſs of publiſhing a Declaration, and talking of an Inſurrection, which is the Treaſon laid as an Overt-Act in *Eſſex*, was done there before Dinner; and when he was ask'd, if there was any Diſcourſe about ſuch a Deſign afterwards at the Lord *North and Grey*'s, he ſays, There was nothing ſaid of it; which is very ſtrange, if there was ſuch a Deſign on foot. As to *Plunket*, it appears, I gave him the half Crown for former Services, and lent him thirteen Shillings to releaſe Major *Barnwell* out of the *Marſhalſea*, and another Guinea in pure Charity; and now he pretends it was given him to liſt Men for the Pretender; but from the Improbability of the Thing, I believe no Perſon can believe him. As to the Scheme it is only prov'd by a Similitude of Hands; which is not Proof in criminal Caſes, eſpecially when the Letters with which the Witneſs compar'd the Scheme were not produc'd. And in this Scheme not one Man is mention'd by Name, only Soldiers to be had here; the *Tower* to be ſeiz'd, the *Bank* and the *Exchange* to be ſeiz'd, and the World to be turn'd upſide down: But by whom? Nor is there any Time mention'd, or any Date to it; if it was written by me, which I abſolutely

lutely deny, it does not appear but it was written ſeveral Years ago; nor is there any Evidence that I acknowledg'd this Scheme to be mine before the Council. How comes it that none of thoſe Lords directly offer'd that Paper to me? and ask'd me, *Is this your Hand-Writing*? There was my Lord Chancellor, my Lord *Harcourt*, and ſeveral other Lords preſent, that very likely would have ask'd that Queſtion; but either they did not think it material, or they had not the Paper there, or they knew I would deny it.

And, Gentlemen of the Jury, my Lord will tell you, that all this Evidence is nothing, unleſs you believe an Overt-Act to be done in *Eſſex*. If what *Lynch* hath ſworn doth not affect me, all the reſt ſtands for nothing. Here has been a vaſt deal of Talk about the Pretender, going to *Rome*, and liſting Soldiers for the Pretender's Service; but this is nothing to the Purpoſe. I would not have the Jury think that a Man is to be hunted out of his Life by fine Speeches, and far-fetch'd Inuendo's. You will conſider the Character of *Lynch*, that he is a Man not to be believ'd: I'll leave it to you, and hope God Almighty will direct you; I ask no more than Juſtice. If a Man's Life is to be taken away by ſuch ſcandalous Evidence, there is an End of all your Liberties; your Wives may be taken from you, your Children made Slaves, and all that is valuable to you; your Lives and Eſtates will be but very precarious. Vol. vi. p. 306.

Sol. Gen. [*Having ſumm'd up the Evidence already given at large, goes on.*] My Lord, the firſt Objection made in Point of Law is, That the Treaſon the Priſoner is indicted for is Compaſſing the Death of the King; and one of the Overt-Acts laid is only a Conſultation to levy War; which they inſiſt is not an Overt-Act of that Species of Treaſon, or indeed, any Treaſon at all, becauſe the Words of the Statute, 25 *Edw.* III. import a War actually levied. The King's Counſel Reply.

One can't help being a little ſurpriz'd to hear this Objection mention'd after that Point has been eſtabliſh'd by ſo many Reſolutions; and in the very laſt Caſe of High Treaſon in this Court, namely, that of *Ker*, *Dorrel*, and *Gordon*. It was ſolemnly determin'd by all the Judges, that a Conſultation to Vol. vi. p. 313.

levy

levy War, in order to deſtroy or depoſe the King, is an Overt-Act of High Treaſon in compaſſing his Death. This was the receiv'd Doctrine before the Revolution; and it has been adher'd to ever ſince; and though the Act of the Reverſal of my Lord *Ruſſel*'s Attainder has been mention'd, yet if that were look'd into, I dare ſay no Declaration will be found in it contrary to this Declaration.

Vol. vi. p. 314. They object further, That no Overt-Act at all has been done in *Eſſex*; and then all the Proof of Facts done in *Middleſex* muſt go for nothing; That the only Tranſaction at the *Green-Man* in *Eſſex* was the publiſhing the Declaration, which is not well prov'd; and if it were, is no Overt-Act of Treaſon; That the Paper itſelf is not produc'd, and parol Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have already obſerv'd, that the Priſoner took back the Paper, and kept it; ſo that the Writing itſelf being in the Cuſtody of the Party, we are entitled within the ordinary Rule to give parol Evidence of the Contents. Beſides, this Declaration was a Part of the treaſonable Conſultation then had; and it would be the fineſt Invention to ſecure certain Impunity to Plotters that ever was thought off, if inſtead of diſcourſing the Conſultation ſhould be carried on by Papers handed from one to another, and no Body could be convicted, becauſe the Papers are not to be found. Mr. *Kettlebey* was pleaſed to ſay, That this could be no Overt-Act of Treaſon, becauſe it was but publiſhing a Libel; but publiſhing a Paper may amount to one Crime or another, according to the Subject-Matter of that Paper. And can it be a Queſtion, whether the publiſhing a Declaration, or a Book, containing Arguments, or offering Rewards, directly to ſtir up the King's Subjects to riſe in Rebellion againſt him, be High Treaſon? The treaſonable Intent in this Caſe cannot be doubted; and 'tis certain that the Publication is an Act; what is there then wantingto make it Treaſon? And the Suppoſition of the Priſoner's Counſel, that there are no other Acts prov'd in *Eſſex*, certainly fails them: For *Lynch* depoſes, That while they ſtaid at the *Green-Man* they conſulted about an Inſurrection; and the Priſoner actually propos'd to him the ſeizing the King's Perſon, which

which are two other Overt-Acts laid in the Indictment.

Another Objection raiſed by Mr. *Kettlebey* is, That we have but one Witneſs, *Lynch* alone, to the Facts in *Eſſex*; and the Indictment muſt fail, unleſs there are two Witneſſes to ſome Overt-Act in the County where it is laid. But the Law is now clearly ſettled, That if ſeveral Overt-Acts are laid, and ſome of them are prov'd by one Witneſs to be done in the County where the Party is indicted, and others of them are prov'd by another Witneſs to have been committed in a different County, that Evidence is ſufficient to maintain the Indictment. And the Reaſon of this is very evident; for otherwiſe treaſonable Conſultation might be carried on in ſuch a Manner, that no Body could be convicted of them: It would be but to lay the Scene upon the Confines of ſeveral Counties, and take care not to conſult with any two Perſons in the ſame County, then there could not be two Witneſſes, and all would be ſafe.

Having done with their Objections in Point of Law, I ſhall give ſome Anſwer to their Obſervations on the Fact, which may be reduc'd to this; That it is highly improbable that what the Witneſſes have ſworn ſhould be true. But before I give particular Anſwers to what they have offer'd, I beg Leave to ſay in general, That though in a doubtful Caſe, where there is any balancing in the Proof, the Improbability of the Thing is a Conſideration of great Weight, yet where there is a plain and poſitive Evidence on one Side, not weaken'd by any Counter-Evidence on the other, the Objection of Improbability can be of little Force.

But to deſcend to Particulars: They ſay 'tis ſtrange the Priſoner ſhould be engaged in ſo dangerous an Undertaking with ſuch Perſons as have ſworn themſelves to be his Accomplices. To which I anſwer, It is always ſtrange that Men ſhould venture to truſt one another with ſuch dangerous Secrets; but certain it is they often do; and as to the Witneſſes, they are prov'd by his own Evidence to be Perſons with whom he thought fit to hold a Correſpondence. Mr. *Kettlebey* inſiſted much upon the Improbability of *Plunket*'s Evidence in thoſe Parts of it which concern *James Plunket* and *Jeffereys* the Nonjuring Parſon; that it is not credible that thoſe two Men, whom

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whom *Plunket* admits to be abſolute Strangers to him, ſhould at firſt Sight open themſelves with ſo great Freedom to a Fellow of his Degree on a Subject of Treaſon: But to this I anſwer, it appears clearly they were in the Confidence of *Layer*, and by his Means both of them might be induced to truſt him.

As to the Scheme, which the Counſel for the Priſoner repreſents as *Fooliſh and Ridiculous* —— *The Scheme of a Madman which could never have taken place.* 'Tis true, the Scheme is ſuch a one, as, I hope in God, could never take place any where but in the Heads of thoſe that fram'd it: But this is no Objection to the Credibility of it, provided it be proved; for, Gentlemen, the Conſideration is not how it now appears to you or me, who look upon it in a different Light, and on contrary Principles from theirs; but the proper Conſideration is, What the Conſpirators themſelves, with regard to the Views and Principles they went on, might think of it, and examine it in that Light: Compare the ſeveral Articles together, and you will find them conſiſtent, all the Parts anſwering to one another: Every Quarter of the Town is provided for; Diſpoſitions made of certain Numbers of Men; and Care taken to preſerve the Communication by Watch-Words; which makes it plain that it was fully conſider'd by thoſe who drew it, and framed not at Random, but upon Computation of a Force of which they thought themſelves aſſured: And what though it ſhould be admitted to be extravagant, and not likely to ſucceed? If that ſhould be given way to, as a certain Objection againſt a Plot's finding Credit after it is detected, I'm afraid it would be a ſure Method to make ſuch Plots ſucceed, or at leaſt to ſecure the Authors from Puniſhment. Do but intermix ſome abſur'd extravagant Parts in the Plan of the Conſpiracy, and then, according to this Reaſoning, it is below Notice, and muſt be ſuffer'd to go on; or if a Stop be put to its Progreſs, yet it is incredible, and no body muſt be believed to be guilty of it. But, Gentlemen, whatever Difficulties may be rais'd againſt particular Parts of the Written Scheme; yet upon the Grounds and Suppoſitions, which the Priſoner and his Accomplices proceeded on, their general Deſign might appear very feaſible

feaſable to themſelves; for it is plain they had a Dependance, however ill founded, upon Diſcontents rais'd in the Minds of the People, and on corrupting great Numbers of the Army; and after they had made a Beginning here, it is proved they expected Aſſiſtance from abroad.

As to the Teſtimony of the Priſoner's Witneſſes, it is to be obſerved that they have ſcarce called any Witneſs to contradict the Facts contain'd in our Evidence, but only to the Character and Credit of the Witneſſes produced for the King. Gentlemen, it is not to be expected that Conſpiracies of this kind would be proved by Perſons of the beſt Characters: They can only be proved by thoſe who have been privy to them; and ſuch Perſons ſeldom are of Characters abſolutely unblemiſh'd; and therefore to ſay that ſuch Witneſſes are not to be believ'd, is in effect to ſay that no Evidence of a Plot is to be believed. The firſt Witneſs they call'd on this Head was my Lord *North and Grey:* I am heartily ſorry to ſee his Lordſhip here, in his preſent Condition, upon this Occaſion; becauſe it obliges me to obſerve, that here are Circumſtances proved that affect him. But what is his Lorſhip's Evidence? He ſays, the Priſoner brought *Lynch* to his Houſe, introduced him; and that he was never acquainted with *Lynch* before, but upon *Layer*'s Recommendation, received him civilly; that he gave a vile Account of himſelf when he was firſt introduced; and that when he came a ſecond Time, his Lordſhip would not give him a Lodging. But I can't help remarking, that his Lordſhip gives no Account of any Buſineſs which either the Priſoner or *Lynch* had with him, or of any particular Occaſion upon which *Layer* introduced him; which was a Matter within his Lordſhip's own Knowledge. It is a little odd too, that *Lynch* being an abſolute Stranger to this noble Lord, and introduced by a Friend to a Perſon of his great Quality, ſhould have ſo little regard to his Friend, or the Opinion of that noble Lord, as at the firſt Interview to give a moſt vile infamous Character of himſelf.

As to the other Witneſſes to *Lynch*'s Credit, they were moſt of them going to enter into particular Facts, which the Court, according to the conſtant Courſe of Evidence, over-ruled them; for if particular

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particular Facts were to be given in Evidence to impeach the Character of a Witneſs, it were impoſſible for a Witneſs, having no Notice what will be ſwore againſt him, to come prepared to anſwer ſuch a Charge: Some of theſe Witneſſes ſay, they have known him but a little while; others know no Ill of him: And for ſome of the reſt, I ſubmit it to the View and Conſideration of the Jury, from their Habit and the Appearance they made, whether they ought not to have brought Witneſſes to ſupport their Credit.

The ſame Thing befel them in the Evidence they call'd to *Plunket*'s Credit, as in the Caſe of *Lynch*: *Barnwell* gives *Plunket* an ill Character, but confirms ſeveral of the Facts which the other ſwore; and Mrs. *Child* likewiſe ſupports *Plunket*, as to the Circumſtance of his carrying her Husband to the Priſoner's Houſe.

As to Mrs. *Maſon*, they have taken a great deal of Pains to prove her an ill Woman; but whatever ſhe be, ſhe is one with whom Mr. *Layer* thought fit to converſe, and therefore it is not improbable that ſhe might be entruſted by him; and it is from ſuch only we can have any Diſcovery. The Priſoner has indeed brought two or three Women, who talk very faſt, and ſeem very angry with her; one of them tells the Jury in a Scolding Way, *She don't care what ſhe ſays or does:* Another, *That ſhe would take away any Man's Life for the Value of a Farthing*, and ſuch kind of vehement Expreſſions. It is ſufficient to ſay, that People who talk thus looſely and paſſionately upon their Oaths, deſerve little Credit; but had they brought a much ſtronger Evidence againſt the Characters of the King's Witneſſes, what would it have availed them? When their Credit in this Cauſe is undeniably ſupported, as to ſeveral material Facts by the Priſoner's Witneſſes themſelves, but moſt ſtrongly by the Papers, againſt which, I apprehend, nothing has been ſaid to take off their Force. If thoſe Papers are not genuine, how ſhould the Notes ſigned by the Pretender's Hand, which the Priſoner received from Sir *William Ellis*, come to be amongſt them? How ſhould this Scheme, proved to be Mr. *Layer*'s own Hand-Writing, have been there? As to the Evidence of *Bennet*, once the Priſoner's Clerk, and now his Solicitor, who ſwears he

he believes the Scheme not to be the Priſoner's Hand, though he is willing to carry his Belief as far as he can. He is forced to acknowledge another Matter, which verifies the Papers contain'd in theſe Packets to be his Maſter's Papers; for he ſwears one of them was written by himſelf for the Priſoner, and by his Direction; which confirms Mrs. *Maſon*'s Teſtimony, that theſe Papers came from Mr. *Layer*.

You have alſo the Priſoner's own Confeſſion, proved by two Gentlemen of unqueſtionable Credit; and ſurely he muſt be allow'd a good Witneſs againſt himſelf; and though we might ſafely leave the Credit of our Witneſſes on theſe Obſervations, yet to take off any ill Impreſſions, and vindicate their Characters, we ſhall produce Perſons of undoubted Reputation, who will ſatisfy you that their general Character is ſuch, that they very well deſerve to be believed by you: And thus we have fully made good what was open'd to you, That in general there has been a horrid Conſpiracy to overthrow our happy Conſtitution, and deprive us of all the Bleſſings we enjoy and promiſe ourſelves under this Eſtabliſhment in his Majeſty and his Proteſtant Family. The Part the Priſoner has acted in this, appears to be very conſiderable: It has been ſaid indeed, that he is a Man of no Rank or Fortune fit to ſuſtain ſuch an Undertaking; but ſince it is plain he did undertake it, this ſerves only to demonſtrate he was ſet on work, and ſupported by Perſons of greater Abilities: And, Gentlemen, this is the moſt affecting Conſideration of all.—— But I would not, even in this Cauſe of your King and Country, ſay any Thing to excite your Paſſions; I chooſe rather to ſubmit the Strength and Conſequence of the Evidence to your Judgments; and I beg of your Lordſhip, for the ſake of the King, for the ſake of myſelf, and for the ſake of the Priſoner, if I have omitted or miſrepeated any Thing, or laid a greater Weight upon any Part of the Evidence than it will properly bear, your Lordſhip will be pleaſed to ſet it right, that the whole Caſe may come before the Jury in its true Light. Vol. vi. p. 317.

Mr. *Kettlebey*. I ſhall not take up your Lordſhip's Time, ſince you have been ſo well and ſo long entertained by Mr. Sollicitor, at leaſt two Hours by

my Watch. 'Twas impoſſible to think him tedious, though ſo late at Night, eſpecially ſince his Concluſion is exactly agreeable to the Concluſion of a late celebrated Solicitor-General upon a like Occaſion.

Att. Gen. We ſhall call ſome Witneſſes to ſupport the Credit of Mr. *Lynch*, and *Matthew Plunket*.

[Vernon *ſworn.*]

Serj. *Cheſhire.* What do you know of Mr. *Lynch*?

Vernon. I keep the *Swan and Rummer-Tavern* in *Finch-Lane*. He hath frequented my Houſe theſe four Months every Day, till he was in Cuſtody. He hath been a good Cuſtomer, and paid me honeſtly.

Serj. *Cheſhire.* Have you ſeen Mr. *Lynch* and the Priſoner in Company at your Houſe?

Vernon. I have ſeen them twice in Company at my Houſe.

Mr. *Kettlebey.* Did he ſpend his Money freely.

Vernon. Yes: Some Part of it I have had ſince he was in Cuſtody.

Mr. *Kettlebey.* How much was he in your Debt before he was in Cuſtody?

Vernon. Ten or eleven Shillings.

Mr. *Kettlebey.* How long had he been in Cuſtody before he paid you?

Vernon. Not long.

Mr. *Hungerford.* He had the Firſt-Fruits of his being in Cuſtody. He had ſome Money, and ſo he paid you your Reckoning.

[*Captain* Malthus *ſworn.*]

Serj. *Cheſhire.* How long have you known Mr. *Lynch*?

Malthus. About nine Years. I knew him firſt when he was a Merchant at the *Canaries*. I have traded with him ſeveral Times, and have ſeen him at Home.

Att. Gen. Do you think he would ſwear falſly?

Malthus. No; I don't think he would.

Mr. *Kettlebey.* Do you know any Thing of his Behaviour?

Malthus. I never knew an ill Character of him in my Life.

Captain

[*Captain* Arnold *ſworn.*]

Serj. *Cheſhire.* What Character has *Stephen Lynch*? Vol. vi. p. 318.

Arnold. I have known him theſe fourteen Years. I don't think he would forſwear himſelf; but I never had any Dealings with him.

Serj. *Cheſhire.* Would you have truſted him with five hundred Pounds?

Mr. *Kettlebey.* Would you truſt him with five Shillings?

Arnold. Five Shillings is a ſmall Sum.

[*Colonel* Manning *ſworn.*]

Serj *Cheſhire.* Do you take *Matthew Plunket* to be an honeſt Man?

Col. Manning. I have known him above ten Years. He behaved himſelf like an honeſt Man.

Serj. *Cheſhire.* Do you think he would forſwear himſelf?

Col. *Manning.* No; I believe not.

[*Major* Hamel *ſworn.*]

Serj. *Cheſhire.* What Character hath *Matthew Plunket*?

Maj. *Hamel.* I have known him theſe ſeventeen Years. He was a Drummer in the Regiment, and always had a good Character. He went from *Ireland* to *Spain.*

Mr. *Hungerford.* You ſpeak of his Military Conduct.

Mr. *Hamel.* I know of no other.

[*Captain* Crosby *ſworn.*]

Serj *Cheſhire.* What Character hath Serjeant *Plunket*?

Capt. *Crosby.* He had a good Character while I knew him, which was about three Years.

Serj. *Cheſhire.* We won't give your Lordſhip any farther Trouble.

Mr. *Kettlebey.* And we apprehend we have no Occaſion to trouble your Lordſhip by Way of Reply.

Lord Chief Juſtice's Obſervations on the Evidence.

L. C. Juſtice. *Gentlemen of the Jury*, Before I obſerve on the Evidence I muſt tell you, that the Law is undoubtedly ſo: If a Man is charged with Treaſon, in compaſſing and imagining the Death of the King, there muſt be an Overt-Act of that Treaſon proved in the County where he is indicted; and if there be ſuch Overt-Act in that County, he may be charged with any Overt-Act of the ſame Species of Treaſon in any other County whatſoever. [*After which the Lord Chief Juſtice proceeds to ſum up the Evidence which has already been repeated at large till he comes to this Paſſage.*] As to the Overt-Act of publiſhing the Declaration, that is ſupported beyond Contradiction; for it appears in the Priſoner's Examination before the Lords of the Council, when he is asked, *Whether ever he ſaw the Declaration?* he ſays, *he never ſaw any but one, and that was drawn by himſelf.*

Vol. vi. p. 320. The Reader will judge by the preceding Evidence whether this Fact be not miſtated.

Priſoner. My Lord, what Mr. *Stanyan* ſays, I believe, he did not ſay that I confeſſed that it was drawn by me.

L. C. Juſtice. You muſt not interrupt me while I am directing the Jury. You have behaved yourſelf intemperately hitherto; but you muſt not interrupt me; I can't bear it. The Subſtance of what Mr. *Stanyan* ſaid, is, That when it was demanded of you, *Whether you had ſeen the Declaration?* You ſaid, *You had ſeen none, but a rough Draught that was drawn by yourſelf.*

Priſoner. I beg your Lordſhip's Pardon; Mr. *Stanyan* is here in Court?

L. C. Juſtice. Let him be asked the Queſtion again.

Quære if any Thing like this appears in the Trial before.

Mr. *Stanyan.* I believe I did ſay, *That Mr.* Layer *did confeſs it was the Heads of a Declaration which he had drawn himſelf.*

L. C. Juſtice. Now, Sir, after this, I expect not to be interrupted by you any more. This being the Matter, he doth at the ſame Time confeſs, *That that was the Declaration which he had ſhewn to Mr.* Lynch *at the* Green-Man, *on the Way as they were going to Lord* North and Grey's; ſo that Part of this Evidence is ſupported by his own Confeſſion.

Or like this.

[*Then*

[*Then his Lordſhip proceeds to ſum up the Remainder of the Evidence: And the Jury withdrawing about Half an Hour, returned into Court, and brought the Priſoner in* GUILTY. He is found guilty. Vol. vi. p. 323.

Att. Gen. We pray a Rule may be made to bring up the Priſoner to receive Sentence.

Mr. J *Eyre.* He muſt have four Days to move in Arreſt of Judgment. Let there be a Rule to bring him up on Thurſday next.

Die Martis 27 *Die Novembris*, 1722.

Chriſtopher Layer Eſq; was brought to the Bar of the Court of *King's-Bench*, in order to receive Sentence. He is brought to the Bar to receive Sentence.

Att. Gen. My Lord, the Priſoner ſtands convicted of High Treaſon; I pray your Lordſhip's Judgment againſt him for the King.

Clerk of the Court. Chriſtopher Layer, Hold up thy Hand, *&c.* What can'ſt thou now ſay for thyſelf, why the Court ſhould not give Judgment againſt thee according to Law.

Mr. *Hungerford.* I hope your Lordſhip will order his Irons to be taken off, at leaſt during his Attendance here.

L. C. Juſtice. I don't know. There is none of the Caſes that go further than during the Time of his Trial. I would recommend it to Mr. Attorney, not to make a Precedent of it, that his Irons may be taken off.

Serj. *Pengelly.* My Lord, we don't oppoſe it.

[*Then the Irons was taken off.*]

Mr. *Hungerford.* I am Counſel for the Priſoner. I have, and I hope I ſhall continue to do him what Service I can. The Priſoner's Life is at Stake; and I hope I ſhall not be thought troubleſome, if I deſire a Record to be read, which hath not been read in Court. It is the *Venire*; and that being Part of the Record, we think we are proper to have it read. The Priſoner's Counſel move in Arreſt of Judgment.

Att. Gen. I apprehend what they deſire is directly contrary to Law. There are no Authorities that the Priſoner ſhould either have Copies of the Proceſs, or that the Proceſs ſhould be read him, only to enable him to find Fault. By the Act of Parliament Copies of the Indictment, and Copies of the Names of the Jury, are directed to be delivered the Priſoner; but as to any

any Proceſs, the Act gives no Direction: And therefore, as what they deſire is neither founded on Law or Precedent, we hope it ſhall not be granted.

Vol. vi. p. 324. Mr. *Hungerford.* Before the Act of 7 *Will.* the Priſoner hath deſired his Indictment to be read, and the Court never denied it; and it ſeems as reaſonable to have any other Part of the Record read as the Indictment. No Part of the Record of Conviction is more ſacred than the other.

L. C. Juſtice. What you ask, you muſt own, is without Precedent: You cannot produce one Inſtance that ever the Priſoner deſired the *Venire* ſhould be produced, and read to him. We muſt not eſtabliſh a new Courſe; we can't ſee what the Conſequences may be. [*All the reſt of the Judges concurred that the* Venire *ought not to be read.*]

Vol. vi. p. 325. *Priſoner.* If it doth appear there is an Error in the Proceedings on the Foot of the *Venire*, I humbly hope I ſhall have the Benefit of it The *Venire*, as I take it, is returnable the 19th of this Month of *November*, and I was not try'd till the 21ſt; therefore whether, or no, after the Return of the Writ, this is a good Conveening of the Jury to try me on a Writ, when there was no ſuch Writ in being? I humbly hope I ſhall have Leave to look into the *Venire*; and if it comes out ſo, I hope it is erroneous, and that Judgment ſhall be arreſted.

Mr. *Hungerford.* My Lord, there are ſtated Return Days in the Law; and if a Man appears in a Court of Juſtice one Day, and he is not by the Courſe of Proceeding indulged with a farther Day of appearing, there is a Diſcontinuance of the Proceſs,

Vol. vi. p. 326. and the Man is out of Court. I take the *Quarto Die poſt* to be an Indulgence, which a Court of Juſtice gives to a Suitor to appear at a farther Day, when he ought to have appear'd at a former Day; and this is the Practice in real Actions in the Court of Common Pleas: But in Caſes of Juries, who are not Suitors in Court, I take the Law and Practice to be, that they are obliged to attend upon the Proceſs of the Court. They muſt do Duty on the Return of the *Venire*, which in this Caſe is on *Monday* the 19th of *November*; and they did not appear till *Wedneſday* the 21ſt; ſo that if they were to appear on *Monday* the 19th of *November*, and did not appear, then there muſt appear ſome Act of the Court by which they

they were indulged to a farther Day; and I put it upon Mr. *Harcourt* to ſhew whether there is any Indulgence of the Court entered upon Record, for the continuing of the Jury till the *Wedneſday* following; and if there is not, there is then a Diſcontinuance of their being in this Court, and conſequently the Proceedings irregular, and the Trial a Miſtrial.

L. C. Juſtice. Becauſe you have appealed to Mr. *Harcourt*, I ſhall ask him the Queſtion.

Mr. *Harcourt.* If a *Venire* be returnable the firſt general Return of the Term, the Appearance-Day of the Jury is the *Quarto Die poſt*, which is the firſt Day of the Term. If the Court is not pleaſed to try the Priſoner, then they may adjourn the Jury over to any Day before the next Return; but no Entry is ever made on Record of ſuch Adjournment, and the Proceedings are always entered on Record to be at the Return of the Writ. In all other Returns in the Term the ſame Courſe is obſerved. The Jury is never obliged to appear before the *Quarto Die poſt*, nor can the Priſoner be try'd ſooner. This Matter was ſettled on great Deliberation by my Lord Chief Juſtice *Holt*, and I am confident has been ever ſince ſo practiſed.

Mr. *Kettlebey.* Notwithſtanding what Mr. *Harcourt* hath ſaid, I muſt beg Leave to inſiſt, that there hath been a Miſtrial, and Judgment ought to be arreſted; for in the Trial of *Rockwood*, it was agreed by the Court, and all the King's Council, that the Trial muſt be on the Day of the Return of the *Venire*, or elſe it would be Error. My Lord Chief Juſtice *Holt* declared, the Iſſue could not be tried after the Day of the Return.

Mr. J. *Eyre.* That was on a Commiſſion of *Oyer* and *Terminer*, which was quite different; there is no *Quarto Die poſt*, no Day of Appearance, but the Day of the Return of the Writ. Vol. vi. p. 327.

Mr. *Harcourt.* If this was to be a Diſcontinuance, what will become of all the Records where the Proceedings are at general Returns, and which are tried on the *Diſtringas*, which always bear Teſt the *Quarto Die poſt* after the Return of the *Venire*? Every one of theſe Records, which are many every Term, would be diſcontinued.

L. C. Juſtice. You can't but be ſenſible there is nothing in this Objection.

Pri-

Priſoner. My Lord, I humbly offer to your Lordſhip, that the Overt-Act of Treaſon in *Eſſex* found by the Jury, is no Overt-Act at all; tho' there was a conſulting and agreeing in order to levy War, yet it doth not appear that War to be levied was ſuch a War, as in Law is adjudged to be Treaſon.

Mr. *Hungerford.* My Lord, he hath juſtly obſerved, ———

Vol. vi. p. 328. Serj. *Pengelly.* My Lord, I would not interrupt Mr. *Layer*, becauſe it may be ſuppoſed, he is not ſo well acquainted with the Proceeding; but, I hope, I may take the Liberty to interrupt his Counſel, who know by very great Experience the Method of Proceeding, that they are not now to inſiſt on the Nature of the Evidence, whether it be ſufficient to maintain the Indictment; that is not the Buſineſs of this Day. If they have any Thing to offer in Arreſt of Judgment, that they are at Liberty to do.

Att. Gen. The Counſel for the Priſoner know very well, that the Evidence given at the Trial is not now before your Lordſhip. Let them apply themſelves to move in Arreſt of Judgment, if they can find any Thing on the Face of the Record of which they can take Advantage.

Mr. *Hungerford.* My Lord, I ſhall conform my ſelf to the Rules the King's Counſel preſcribe, to obſerve upon nothing but the Record. The Indictment is in this Manner: The Species of Treaſon laid to the Charge of the Priſoner, is the Compaſſing and Imagining the Death of the King. The firſt Overt-Act of that Treaſon is, that he did meet, conſult, conſpire, and agree, to raiſe a Rebellion and War in the Kingdom, which is no Overt-Act of Compaſſing and Imagining the Death of the King.

L. C. Juſtice. Mr. *Hungerford*, we would hear you any Thing that is proper; but conſider, if you are not offering a Matter in Arreſt of Judgment, that hath been determined againſt you an hundred Times. Hath not it been conſtantly allowed as an Overt-Act of Treaſon in compaſſing and imagining the Death of the King, if the Parties did meet, and conſult, and agree to levy War; and do you think we will give a Judgment contrary to our learned Predeceſſors in Caſes of the greateſt Moment?

All

[All the other three Judges gave their Opinions, *That the Conſulting and Agreeing to levy War was an Overt-Act of Treaſon in Compaſſing and Imagining the King's Death.*] Vol. vi. p. 329. Conſulting to levy War an Overt Act of compaſſing the King's Death.

Mr. *Hungerford.* There is another Thing ariſes upon another Overt-Act in the Indictment, that is *publicavit quoddam Scriptum*, &c. I apprehend the Subſtance of the *quoddam Scriptum* ought to be mentioned in the Indictment, by the Rule given by all the Judges of *England* in Dr. *Sacheverell*'s Caſe. In all Accuſations, whether by Information or Indictment, the Words ſuppoſed to be Criminal ought to be inſerted; and ſince that is not done in this Caſe, the Overt-Act is not well laid, and the Judgment ought to be arreſted.

L. C. Juſtice. If but one Overt-Act is well laid and proved, it is ſufficient. I am ſorry you will force me to remember what I would willingly forget: I remember, Mr. *Hungerford*, you were pleaſed to compare the Declaration to a Ballad, and ſaid, he might as well publiſh a Ballad. Is this an Expreſſion fit to be uſed when a Priſoner is on Trial for his Life, and an Inſurrection is proved to be intended againſt the King? is this to be treated in ſo ludicrous a Manner?

Mr. *Hungerford.* I am ſure I did not ſay he might as well publiſh a Ballad, and make it Treaſon. I have more Duty and Regard to his Majeſty, and the Quiet of his Kingdom, than to expreſs myſelf ſo. What I then obſerv'd was, That there were but few Minutes to tranſact the Buſineſs at the *Green-Man:* That what was done, could not amount to the publiſhing of a Declaration, when there was nothing done but a Man's reading to himſelf. I knew the whole Accuſation turn'd upon that Tranſaction at the *Green-Man*; and in Service to my Client, I thought it my Buſineſs to make it appear as inconſiderable as I could; and in this, if I have offended your Lordſhip, I beg your Pardon.

Mr. *Kettlebey.* I muſt beg Leave to obſerve, That if any one of the Overt-Acts laid in the Indictment appears to be bad, Judgment ought to be arreſted.

L. C. Juſtice. Quite the contrary. If one Overt-Act holds, the Indictment is good: You will find If any one Overt-Act holds, the Indictment is good.

it ſo in *Rockwood*'s Trial, which you have in your Hand.

Vol. vi. p. 330. Mr. *Kettlebey*. I cannot find any ſuch Thing in *Rockwood*'s Trial, or any where elſe, that one good Overt-Act ſhould maintain the whole Indictment. I admit three or four of them to be good as laid in this Indictment. The only Objection I have, is to the Uncertainty of that which relates to the publiſhing of a malicious, ſcandalous, ſeditious, and traiterous Writing, *continen' & purportan', &c.* The Rule my Lord *Coke* lays down in his *Firſt Inſtitutes*, *Fol.* 303. is, That in Indictments a Certainty to a common Intent is not ſufficient. The Words here are, that he *Publicavit quoddam malitioſum, ſeditioſum, & proditorium ſcriptum*, and then ſets forth only the Subſtance of the Libel in general. Is there not the ſame Reaſon that the Words ſhould have been ſet forth in this Indictment, as in an Indictment for a Libel, that ſo the Court might judge upon the Face of the Indictment, whether they did import an Excitement and Exhortation *levare guerram*? I muſt own in two or three late Caſes, the Words have not been ſet forth. In *Francia*'s Caſe the Indictment charg'd, That he wrote ſeveral Letters notifying his Intention to levy War, without particularizing the Words of thoſe Letters, or the Subſtance of them. The Queſtion was not upon an Arreſt of Judgment, but came on in the Courſe of the Trial, whether ſuch Evidence ſhould be allow'd. It was inſiſted, there was a Letter mention'd, and the Subſtance of that Letter ought to have been ſet forth in the Indictment, or elſe the Letter itſelf ought not to be read, much leſs a Copy of it enter'd in the Priſoner's Book as Evidence againſt him. And I muſt beg Leave to rely on the ſolemn Reſolution of all your Lordſhips in Dr. *Sacheverell*'s Caſe, *That the very Words ſhould be expreſly ſet forth in all Indictments* whatſoever. In the Caſe of Colonel *Sidney* the very Words were ſet forth. And where there is a Libel, a Book, or Letters, charg'd as the Overt-Act of that which is ſuppoſed to be Treaſon, and upon which the Offence is grounded, they ought to be ſo far ſet forth, that a Perſon may have an Opportunity to clear himſelf of the Accuſation. I don't know any Precedent to the contrary, but that of *Francia*'s Caſe, where there was not any Opportunity

tunity of debating it, he being acquitted on his Trial, and the Caſe of *Coleman*, which was before any Counſel was allow'd.

L. C. Juſtice. The Objection was taken in *Francia*'s Caſe as properly, as if it had been in Arreſt of Judgment, and was over-rul'd. And as to what you ſay, that the Words muſt be ſet forth, it is perfectly wrong; a Man may ſet forth the Subſtance of the Words, without ſhewing the Words themſelves. This is the Way that is proper to be taken.

Mr. J. *Eyre.* It was indeed the Opinion of the Judges at Dr. *Sacheverell*'s Trial, that the particular Words, ſuppoſed to be criminal, ought to be expreſly ſpecified in every Indictment. And I can't forbear ſaying, that it was a great Surprize to *Weſtminſter-Hall*, and particularly to thoſe who attended this Court; for we had learn'd from my Lord Chief Juſtice *Holt*, that a Libel might be deſcrib'd either by the Senſe and Subſtance, or by the particular Words; and that an Indictment or Information in either of theſe Forms would be good. In the Books of Entries you will find ſeveral Inſtances where Slanders and Perjuries are charg'd in *Latin* as falſe and ſcandalous Aſſertions, and not in the Words ſpoke. In *Haley*'s Caſe, * who was indicted for treaſonable Words, it was charg'd in the Indictment, that ſpeaking of the King he had traiterouſly declar'd, *Quod ipſe prædictus Haley ipſum Dominum Regem interficeret.* And the Fact was, that *Haley* in Converſation had ſpoke Words to this Effect in *French*; and this was thought ſufficient to convict him of High Treaſon; and yet the particular Words ſuppos'd and adjudg'd to be criminal were not ſpecified in the Indictment; and I don't find that the ſpecifying of the particular Words was ever held to be neceſſary, till this ſudden Opinion was given; and therefore I can't hear it urg'd as an Authority, without offering my Reaſons to the contrary.

Sufficient to ſet forth the Subſtance of the Words, ſuppoſed to be criminal in an Indictment. Vol. vi. p. 331.

Serj. *Pengelly.* I deſire to put Mr. *Kettlebey* this Caſe: Suppoſe any one had proclaim'd the Pretender at *Charing-Croſs*, and had read his Declaration, exciting the People to revolt, &c. and this Declaration

* *Michaelmas*, 30 *Car.* II. B. R. Trial 74. *Rex in Griepe*, *Trin.* 8. 21.

tion had been carried off, ſo that it could not be recover'd and produc'd in Evidence, whether that Perſon might not be indicted for High Treaſon, without ſetting forth the particular Words which he read out of ſuch Declaration?

Mr. *Kettlebey.* The reading of the Paper in that Caſe would be ſufficient.

L. C. Juſtice. Have you any Thing farther to offer?

Clerk of the Court. Chriſtopher Layer, hold up your Hand. You have been indicted of High Treaſon, *&c.*

Priſoner. I have nothing more to ſay, becauſe my Counſel have given it up; but after your Lordſhip has paſs'd Sentence upon me, I deſire a reaſonable Time to ſettle my Accounts with my Lord *Londonderry*, and others I have Dealings with; and I hope your Lordſhip will give me ſtill further Time to make up that great Account I have in another Place; and then if his Majeſty don't think fit to continue me in this World, I will dare to die like a Gentleman and a Chriſtian, not doubting but that I ſhall meet with a double Portion of Mercy and Juſtice in another World, though it be denied me in this.

After which the Lord Chief Juſtice proceeded to paſs Sentence as uſual in Caſes of High Treaſon.

He was executed *May* 17. when he made a ſhort Speech; wherein he avowed the Principles for which he ſuffer'd, recommending the Intereſt of the Pretender, and ſaid, *He had committed his Thoughts to Writing, and left it with a Friend.* But this Writing never appear'd in Publick.

The End of the Eighth Volume.